
TEXAS REGISTER

Volume 34 Number 40

October 2, 2009

Pages 6703 - 6912



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Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the
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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for September 14, 2009

Appointed to the Humanities Texas for a term to expire December 31, 2010, Venus Strawn of Austin (replacing Kit Moncrief of Fort Worth whose term expired).

Appointed to the Central Texas Regional Review Committee for a term at the pleasure of the Governor, Jerry V. Grayson of Lampasas (replacing Robert McCauley of Lampasas whose term expired).

Appointments for September 16, 2009

Appointed to the Bexar Metropolitan Water District Oversight Committee for a term at the pleasure of the Governor, Rhonda E. Harris of Dallas (replacing Jose Aceves of San Antonio who resigned).

Appointed to the Texas Bioenergy Policy Council, pursuant to SB 1016, 81st Legislature, Regular Session, for a term to expire September 1, 2011, Bruce E. Bagelman of Dallas.

Appointed to the Texas Bioenergy Policy Council, pursuant to SB 1016, 81st Legislature, Regular Session, for a term to expire September 1, 2011, James A. Brody of Lufkin.

Appointed to the Texas Bioenergy Policy Council, pursuant to SB 1016, 81st Legislature, Regular Session, for a term to expire September 1, 2011, Paul Dickerson of Houston.

Appointed to the Texas Bioenergy Policy Council, pursuant to SB 1016, 81st Legislature, Regular Session, for a term to expire September 1, 2011, Kevin J. Land of Lake Jackson.

Appointed to the Texas Bioenergy Policy Council, pursuant to SB 1016, 81st Legislature, Regular Session, for a term to expire September 1, 2011, Kevin Murphy of Dallas.

Appointed to the Texas Bioenergy Policy Council, pursuant to SB 1016, 81st Legislature, Regular Session, for a term to expire September 1, 2011, Jeffrey M. Trucksess of Houston.

Appointments for September 17, 2009

Appointed as Judge of the 237th Judicial District Court, Lubbock County, effective October 1, 2009, for a term until the next General Election and until his successor shall be duly elected and qualified, Leslie Hatch of Lubbock (replacing Sam Medina of Lubbock who resigned).

Appointed as Judge of the 366th Judicial District Court, Collin County for a term until the next General Election and until his successor shall be duly elected and qualified, Raymond Wheless of Lucas (replacing Greg Brewer of McKinney who resigned).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2015, Christina E. Stirling of Brownsville (replacing Georgiana Gross of San Antonio whose term expired).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2015, Elizabeth J. Tindall of Odessa (replacing Linda Dickerson of New Braunfels whose term expired).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2015, Mary Kate Weems of Waco (Dr. Weems is being reappointed).

Appointed to the Family Practice Residency Advisory Committee for a term to expire August 29, 2012, I. Araceli Davis of San Antonio (Ms. Davis is being reappointed).

Appointed to the Task Force for Children with Special Needs, pursuant to HB 2196 and SB 1824, 81st Legislature, Regular Session, for a term at the pleasure of the Governor, Terry Beattie of Austin. Mr. Beattie will serve as presiding officer of the task force.

Appointed to the Task Force for Children with Special Needs, pursuant to HB 2196 and SB 1824, 81st Legislature, Regular Session, for a term at the pleasure of the Governor, William Terry Crocker, Jr. of McAllen.

Appointed to the Texas Judicial Council for a term to expire June 30, 2015, Richard Battle of Lakeway (reappointed).

Appointed to the Texas Judicial Council for a term to expire June 30, 2015, Henry Nuss, III of Corpus Christi (reappointed).

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2015, Charles J. Hubbard of Austin (replacing Richard Adam of San Antonio whose term expired).

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2015, Harold Ashley Ledger of Nolanville (replacing Paul Kinberg of Dallas whose term expired).

Appointed to the Texas State Board of Podiatric Medical Examiners for a term to expire July 10, 2015, Morgan Talbot of McAllen (replacing Matthew Washington of Missouri City whose term expired).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2015, Dominick B. Bruno, II of Jacksonville (Mr. Bruno is being reappointed).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2015, Keith Drewery of Nacogdoches (replacing Kenneth Darden of Livingston whose term expired).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2015, James E. Hughes, Jr. of Newton (replacing Karen Barber of Jasper whose term expired).

Appointments for September 22, 2009

Appointed to the Texas Crime Stoppers Council for a term to expire September 1, 2013, Katherine Cabaniss of Houston (replacing Dorothy Spinks of Marble Falls whose term expired).

Appointed to the Texas Crime Stoppers Council for a term to expire September 1, 2013, William R. McDaniel of Montgomery (Mr. McDaniel is being reappointed).

Appointed to the Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 2015, Melissa Goodwin of Austin (replacing Betty Harper Murphy of Fredericksburg whose term expired).

Appointed to the Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 2015, Joseph Pennington of Jersey Village (replacing Romulo Chavez of Spring whose term expired).

Appointed to the Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 2015, Ruben Villescascas of Pharr (replacing Gary Swindle of Tyler whose term expired).

Rick Perry, Governor

TRD-200904246



Proclamation 41-3229

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on July 15, 2009, certifying that an extreme fire hazard posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, the extreme fire hazard continues to create a threat of disaster for the people in the State of Texas.

WHEREAS, the state of disaster includes the counties of Anderson, Angelina, Aransas, Archer, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Bosque, Brazoria, Brazos, Brown, Brewster, Brooks, Burleson, Burnet, Caldwell, Calhoun, Callahan, Camp, Cameron, Cass, Chambers, Cherokee, Clay, Coke, Coleman, Collin, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Crosby, Dallas, Denton, Delta, DeWitt, Dickens, Dimmit, Duval, Eastland, Edwards, El Paso, Ellis, Erath, Falls, Fannin, Fayette, Fisher, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Garza, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hamilton, Hardeman, Hardin, Harris, Harrison, Haskell, Hays, Henderson, Hidalgo, Hill, Hopkins, Hood, Houston, Hudspeth, Hunt, Irion, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, Kinney, King, Kleberg, Knox, La Salle, Lampasas, Lavaca, Lee,

Leon, Liberty, Limestone, Live Oak, Llano, Lubbock, Madison, Marion, Mason, Matagorda, Maverick, Menard, McLennan, McMullin, McCulloch, Medina, Milam, Mills, Montague, Morris, Montgomery, Nacogdoches, Navarro, Newton, Nolan, Nueces, Orange, Palo Pinto, Panola, Parker, Pecos, Polk, Rains, Real, Refugio, Runnels, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Schleicher, Shackelford, Shelby, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terrell, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Young, Zapata, and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the Emergency Disaster Proclamation and direct that all necessary measures, both public and private, as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

The renewal of the Emergency Disaster Proclamation becomes effective on September 13, 2009, and shall remain in effect until October 12, 2009, unless renewed or terminated.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 11th day of September, 2009.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200904247



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinion

RQ-0820-GA

Requestor:

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Authority of a licensing agency to obtain criminal history information regarding an applicant (RQ-0820-GA)

Briefs requested by October 16, 2009

*For further information, please access the website at
www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.*

TRD-200904236

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: September 23, 2009

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-549. The Texas Ethics Commission has been asked to consider whether House Bill 2525 adopted during the regular session of the 81st Legislature prohibits a corporation from making expenditures to finance the solicitation of political contributions to a general-purpose committee assisted under §253.100(a) of the Election Code from the employees or families of employees of one or more corporations.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter

36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200904208

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Filed: September 21, 2009



EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES SUBCHAPTER F. SEXUALLY TRANSMITTED DISEASES INCLUDING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV)

25 TAC §97.136

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department) adopts, on an emergency basis, an amendment to §97.136, relating to Prophylaxis Against Ophthalmia Neonatorum. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Executive Commissioner finds that an imminent peril to the public health, safety or welfare requires adoption of the rule on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

Health and Safety Code, §81.091, requires a physician, nurse, midwife, or other person in attendance at childbirth to use or cause to be used prophylaxis approved by the Texas Board of Health (now the Executive Commissioner of HHSC) to prevent ophthalmia neonatorum. This law provides for medical care for newborns to prevent neonatal conjunctivitis and complications such as blindness that may arise in the newborn through birth to a mother with untreated gonorrhea (*neisseria gonorrhea*) or chlamydia (*chlamydia trachomatis*) infection. The law provides that it is a criminal offense, a Class B misdemeanor, for a person to fail to perform a duty required under this law.

The approved prophylaxes are listed in the rule of the department at §97.136. Section 97.136 instructs persons attending the childbirth to administer 1.0% ophthalmic tetracycline solution or ointment, a 0.5% ophthalmic erythromycin solution or ointment, or two drops of 1.0% silver nitrate solution in each eye within two hours of birth. The rule does not allow for any alternates to these prophylaxes. Two of these medications, the 1.0% ophthalmic tetracycline and the 1.0% silver nitrate, are no longer available in the United States.

The third prophylactic medication is 0.5% ophthalmic erythromycin. There is a nation-wide shortage of this prophylaxis. On August 31, 2009, the Centers for Disease Control and Prevention (CDC) issued a "Dear Colleague" letter identifying the reason for the shortage as due to a change in manufacturers. The CDC states that a new manufacturer recently acquired the rights to the ointment and is actively working to make the ointment available and that a second manufacturer is working to increase production during this time of shortage. The United States Food and Drug Administration also has listed erythromycin ophthalmic ointment on its drug shortage website.

On September 4, 2009, CDC issued a "CDC Guidance on Shortage of Erythromycin (0.5%) Ophthalmic Ointment--September 2009." The guidance recommends erythromycin ophthalmic ointment (0.5%) for neonatal prophylaxis. If that ointment is not available, CDC recommends azithromycin ophthalmic solution 1%. If neither of those is available, then CDC recommends gentamicin ophthalmic ointment 0.3% or tobramycin ophthalmic ointment 0.3%. If none of these is available, CDC states that a ciprofloxacin ophthalmic ointment 0.3% may be used. The CDC guidance with more specificity on these recommendations is found at <http://www.cdc.gov/std/treatment/2006/erythromycinOintmentShortage.htm>.

The severe shortage of the only commercially available product approved for use in Texas, 0.5% erythromycin ophthalmic ointment, and the immediate need to approve additional available prophylaxes to protect newborns from the possible complications of certain diseases create an imminent peril to public health, safety, and welfare.

The emergency rule deletes the two prophylaxes not available and lists three additional prophylaxes as an alternative to erythromycin: azithromycin ophthalmic solution 1%, gentamicin ophthalmic ointment 0.3%, and tobramycin ophthalmic ointment 0.3%. While listed in the CDC recommendations as a last resort option, Ciprofloxacin, also known as fluoroquinolone, ophthalmic ointment was omitted from the emergency rule due to medication resistance concerns.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is adopted on an emergency basis under Government Code, §2001.034, relating to emergency rulemaking; and Health and Safety Code, §81.004, which allows the department to adopt rules for the effective administration of the Communicable Disease Control and Prevention Act; §81.021 which requires the department to protect the public from communicable disease; §81.091 which requires the Executive Commis-

sioner of HHSC to approve prophylaxes for ophthalmic neonatorum prevention; and Government Code, §531.0055, and Health and Safety Code §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§97.136. *Prophylaxis against Ophthalmia Neonatorum.*

(a) A physician, nurse, midwife, or other person in attendance at childbirth shall apply, or cause to be applied, to the child's eyes one of the following:

(1) 0.5% erythromycin ophthalmic [a 1.0% ophthalmic tetracycline] solution (drops) or ointment in each eye within two hours after birth;

(2) 1% azithromycin ophthalmic [a 0.5% ophthalmic erythromycin] solution (drops) [or ointment] in each eye within two hours after birth; [or]

(3) 0.3% gentamicin ophthalmic ointment [two drops of 1.0% silver nitrate solution] in each eye within two hours after birth; or

(4) 0.3% tobramycin ophthalmic ointment in each eye within two hours after birth.

(b) Failure to perform is a Class B misdemeanor under the Texas Health and Safety Code, §81.091(g).

(c) The Department of State Health Services (department) may provide an approved prophylaxis without charge to health-care providers if the newborn's financially responsible adult is unable to pay. The health-care provider shall not charge for the prophylaxis that is received free of charge from the department.

(d) Midwives shall follow the additional requirements in Texas Health and Safety Code, §81.091.

(e) A physician, nurse, midwife, or other person subject to this section should review any further guidance issued by the department or the United States Centers for Disease Control and Prevention (CDC) for further specifics on the recommendations on use of each product listed in subsection (a) of this section. The CDC guidance available at the time of the effective date of this rule is found at <http://www.cdc.gov/std/treatment/2006/erythromycinOintmentShortage.htm>.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 15, 2009.

TRD-200904055

Lisa Hernandez

General Counsel

Department of State Health Services

Effective Date: September 15, 2009

Expiration Date: January 12, 2010

For further information, please call: (512) 458-7111 x6972

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 4. TEXAS MILITARY

PREPAREDNESS COMMISSION

SUBCHAPTER B. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM

1 TAC §§4.30 - 4.40

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Military Preparedness Commission (TMPC) proposes the repeal of Chapter 4, Subchapter B, §§4.30 - 4.40, concerning the Defense Economic Adjustment Assistance Grant Program. The 2009 Legislature enacted House Bill 2546, which amended §436.002 of the Local Government Code by establishing the TMPC within, and provided rulemaking authority to, the Texas Economic Development and Tourism Office. The rules currently in Chapter 4 are not adequate to address the rules and best practices of the Texas Economic Development and Tourism Office. The matters addressed by the repealed provisions will be incorporated into a new Chapter 4.

Martin Fox, Director of the Texas Military Preparedness Commission, has determined that for the first five-year period the repeal is in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the repeal.

Mr. Fox also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification of the policies and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Mr. Fox has determined that the repeal shall not have an effect on small businesses or micro businesses.

Written comments on the proposed repeal may be submitted to Martin Fox, Director, Texas Military Preparedness Commission, by electronic mail to tmpe@governor.state.tx.us, or by U.S. mail to P.O. Box 12428, Austin, Texas 78711. Comments are due

within 30 days of the publication of proposed repeal in the *Texas Register*.

The repeal is proposed under House Bill 2546 which authorizes the Texas Economic Development Office to adopt rules necessary for the Defense Economic Adjustment Assistance Grant program and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

There is no other statute, article, or code that is affected by this proposed repeal.

§4.30. *Introduction and Purpose.*

§4.31. *Program Coverage.*

§4.32. *Eligibility for Funds.*

§4.33. *Documentation.*

§4.34. *Maximum and Minimum Awards.*

§4.35. *Application for Funds.*

§4.36. *Processing and Review of Applications.*

§4.37. *Availability of Funds.*

§4.38. *Awardee Responsibilities.*

§4.39. *Commission Responsibilities.*

§4.40. *Reporting Responsibilities.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904156

Aaron Demerson

Executive Director, Economic Development and Tourism
Office of the Governor

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 936-0100



1 TAC §§4.30 - 4.40

The Texas Military Preparedness Commission (TMPC) proposes a new Chapter 4, §§4.30 - 4.40, concerning the Defense Economic Adjustment Assistance Grant Program. The 2009 Legislature enacted House Bill 2546, which amended §436.002 of the Local Government Code by establishing the TMPC within, and provided rule making authority to, the Texas Economic Development and Tourism Office. The new rules in Chapter 4 will reflect the changes in Sections 1, 18(a), 19(6), 20(b) and 21(4) of House Bill 2546 and also implement best practices of the Texas

Economic Development and Tourism Office. These matters incorporate the matters addressed in the prior Chapter 4 rules, which are being repealed in their entirety and are being replaced with these new rules.

Proposed §4.30 sets forth the background and definitions of the program and the application of the rules to grants awarded on or after September 1, 2009.

Proposed §4.31 sets forth the time limit in which grant funds must be expended.

Proposed §4.32 sets forth the eligibility requirement for an entity to apply for funds.

Proposed §4.33 provides the types of acceptable source documentation.

Proposed §4.34 sets forth maximum and minimum grant award amounts.

Proposed §4.35 sets forth the documentation requirements for the application.

Proposed §4.36 sets forth the processing and review of applications.

Proposed §4.37 sets forth the availability of funds.

Proposed §4.38 sets forth the Awardee responsibilities.

Proposed §4.39 sets forth the Commission's responsibilities.

Proposed §4.40 sets forth the reporting responsibilities of the grant recipient.

Martin Fox, Director, Texas Military Preparedness Commission, has determined that for the first five-year period the new rules are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the new rules.

Mr. Fox also has determined that for each year of the first five years the new rules are in effect the public benefit anticipated as a result of enforcing the new rules will be clarification of the policies and procedures the TMPC will follow to implement its statutory duties to award grants from the Defense Economic Adjustment Assistance Grant program. There are no anticipated economic costs to persons who are required to comply with the new rules as proposed.

Mr. Fox has determined that the new rules shall not have an effect on small businesses or micro businesses.

Written comments on the proposed new rules may be submitted to Martin Fox, Director, Texas Military Preparedness Commission, by electronic mail to tmprc@governor.state.tx.us, or by U.S. mail to P.O. Box 12428, Austin, Texas 78711. Comments are due within 30 days of the publication of proposed rules in the *Texas Register*.

The new rules are proposed under House Bill 2546 which authorizes the Texas Economic Development Office to adopt rules necessary for the Defense Economic Adjustment Assistance Grant program and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies.

There is no other statute, article, or code that is affected by these proposed new rules.

§4.30. Introduction and Purpose.

(a) Background. The Texas Defense Economic Adjustment Assistance Grant Program (DEAAG) was authorized by the 75th Legislature to provide state funds to assist communities that have been adversely impacted by decreased defense expenditures and defense worker employment. Subsequently, the 79th Legislature amended the program to include defense communities that have been positively impacted and the 81st Legislature amended the program to include job retention.

(b) The goal of the program is to increase and/or retain employment opportunities for dislocated defense workers and residents of adversely affected defense communities and reuse vacated property as efficiently as possible. The goal is to also assist positively affected defense communities that receive new or expanded military missions as a result of the United States Department of Defense Base Realignment and Closure process.

(c) A local government entity is eligible for a grant if it is:

(1) a municipality or county that is a defense community;

(2) a regional planning commission that has a defense community within its boundaries;

(3) a public junior college district all or part of which is located in a defense community;

(4) a campus or extension center of the Texas State Technical College system located in a defense community;

(5) a defense based development authority created under Chapter 379B, Local Government Code; or

(6) a political subdivision having the power of a defense development authority created under Chapter 379B, Local Government Code.

(d) Grant Criteria:

(1) To meet a matching money or investment requirement in order to receive from the United States Government assistance that is provided to allow the government entity to respond to or recover from an event listed in §486.003 of the Government Code;

(2) Acquiring federal grant assistance or for sharing in the costs of purchases of property from the Department of Defense or its designated agent, new construction, rehabilitation, renovation or demolition of facilities;

(3) Construct infrastructure and other projects necessary to accommodate a new or expanded military mission(s) at a military facility located in or near the local government entity;

(4) If the grantee is a public junior college or a technical college, grant proceeds may be used to purchase or lease equipment to train defense workers whose jobs have been threatened, lost, gained or retained.

(e) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings unless indicated otherwise.

(1) Awardee--The local governmental entity whose application is approved by the governing board.

(2) Defense worker--

(A) An employee of the United States Department of Defense, including a member of the armed forces and government civilian workers;

(B) An employee of a government agency or private business, or entity providing a Department of Defense related function, who is employed on a defense facility;

(C) An employee of a business that provides direct services or products to the Department of Defense and whose job is directly dependent on defense expenditures; or

(D) An employee or private contractor employed by the United States Department of Energy working on a defense or Department of Energy facility in support of a Department of Defense related project.

(3) Defense worker job--A Department of Defense authorized permanent position or a position held or occupied by one or more defense workers for more than 12 months.

(4) Defense Facility--A military base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including leased space, that is controlled by, or primarily supports, DoD's activities

(5) Defense community--A political subdivision, including a municipality, county, or special district, that is adjacent to, is near, or encompasses any part of a defense base.

(6) New direct permanent job--A new employment position created by a qualified business that provides at least 1,820 hours of employment a year after the completion of the project and whose position is within the governmental entity's defense community and can be verified. A new direct permanent job can also include subcontractors to a qualified business so long as those jobs relate directly to the work being performed as defined in the DEAAG application and who perform no less than 50 percent of the person's service for the qualified business in the government entity's defense community and can be verified.

(7) Retained jobs--A defense worker employed within the government entity's defense community before a Department of Defense action and is retained as a qualified employee by a qualified employer after the date on which the project is completed, employed at 1,820 hours annually and is located within the government entity's defense community and can be verified.

(8) Office--Texas Economic Development and Tourism Division, Office of the Governor.

(9) Commission--Texas Military Preparedness Commission.

(10) Director--The Director of the Texas Military Preparedness Commission or his designee.

(11) Financial partners--Federal and state agencies, private and public non-profit foundations, local taxing authorities, and private investors who agree to provide money for a project eligible for funding under this grant.

(12) Fiscal year--The State of Texas fiscal year, September 1st through August 31st.

(13) Application Deadline--Not later than 5:00 PM Central Time on the closing date indicated in the grant solicitation.

(14) Governing Board--The Commissioners of the Texas Military Preparedness Commission.

(15) Review Panel--The Defense Economic Adjustment Assistance Review Panel, a group of at least three and not more than five professional full-time employees from within the Office of the Governor, who evaluate grant applications and make grant award recommendations to the governing board.

(16) Qualified Business--A business that is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business within the government entity's defense community.

§4.31. Program Coverage.

State funds provided under the Defense Economic Adjustment Assistance Grant Program must be expended not later than the end of the second full fiscal year after the fiscal year in which the grant was awarded.

§4.32. Eligibility for Funds.

(a) A local governmental entity is eligible for a grant under this program if the governing board determines that it represents an adversely affected defense community that requires assistance because of a significant loss of defense worker jobs attributed to the following event(s):

(1) The proposed or actual establishment, realignment, or closure of a defense facility;

(2) The cancellation or termination of a United States Department of Defense contract or the failure of the Department of Defense to proceed with an approved major weapons system program;

(3) A publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect the community;

(4) The closure or a significant reduction of the operations of a defense facility as the result of a merger, acquisition, or consolidation of a defense contractor operating the facility.

(b) A local governmental entity is eligible for a grant under this program if the governing board determines that it represents a positively affected community as a result of the gain of new or expanded military missions and defense workers, including military and civilian personnel, as a result of the Base Realignment and Closure process.

(c) The loss of defense worker jobs is considered significant if, within the jurisdiction of the local governmental entity applying for the grant, a direct loss of defense worker jobs meets or exceeds the following:

(1) 2,500 defense worker jobs in any area of the municipality or county that is located in an urbanized area of a metropolitan statistical area as defined by the United States Census Bureau;

(2) 1,000 defense worker jobs in any area of the municipality or county that is not located in an urbanized area of a metropolitan statistical area as defined by the United States Census Bureau; or

(3) A defense worker job loss of one percent of the jobs in the municipality or county. The percentage of job loss is arrived at by dividing the number of defense worker jobs lost or projected to be lost by the total civilian employment number in the municipality or county.

(d) The local governmental entity making application for the grant must provide adequate documentation of defense worker job loss during the period between the beginning of the federal fiscal year during which the event described in subsection (a) of this section is finally approved and the date that the event is substantially completed. In order to establish eligibility, this documentation must include:

(1) Defense worker baseline data representing the number of defense workers employed during the fiscal year of the event described in subsection (a) of this section;

(2) Number of defense worker jobs lost during the period between the fiscal year that the event was announced and the date the event is substantially complete;

(3) Total number of people currently employed within the jurisdiction making application; and

- (4) Average defense worker salaries.

§4.33. Documentation.

Appropriate documentation verifying defense worker jobs expected to be lost, gained or retained must be submitted with the application, documentation from but not limited to:

(1) Information from Department of Defense manpower or personnel records, socio-economic impact studies and Environmental Impact Statements; or

(2) United States Census Bureau, Department of Labor, or Texas Workforce Commission reports or statistics; or

(3) Other data provided by the local governmental entity and approved by the Commission may also serve as appropriate documented evidence.

§4.34. Maximum and Minimum Awards.

(a) Amount. The minimum amount of award will be \$50,000. The maximum amount of award will be \$2 million.

(b) Percentage. The governing board may provide up to:

(1) 50 percent of the amount of matching money or investment that the local governmental entity is required to provide for acquiring federal grants; or

(2) 50 percent of the local governmental entity's investment for qualifying redevelopment projects; or

(3) 80 percent of the amount of matching money or investment required in cases where the local governmental entity demonstrates to the Commission that resources are not available because of a limited local governmental entity budget; or

(4) 100 percent to a public junior college, a campus or extension center as defined in §486.003(a)(3) or (4) of the Government Code.

(c) Certification.

(1) Local governmental entities are encouraged to acquire financial assistance for eligible development projects from a variety of sources including federal, state, local and private/public foundations. The Chief Financial Officer of the local governmental entity or the local governing body submitting the application will provide adequate certification showing reasonable local community efforts to acquire funding from other sources when the state is the only other financial partner.

(2) In submitting an application under subsection (b)(3) of this section, the Chief Financial Officer or the local governing body will certify that local community budget and resources are not adequate or available and shall provide specific information on local efforts to secure adequate funding. Justification should include an overview of the status of development sales tax efforts and bond authority.

§4.35. Application for Funds.

(a) The Commission shall develop a formal application form to be included in the formal application process to assist in the evaluation of the grant submission. The application may require certain attachments and certifications.

(b) At a minimum the application for funds will include:

(1) A detailed overview of the project and the use of the funds;

(2) An overview of the event(s) that qualify the local government, under the eligibility criteria described in §4.32 of this title (relating to Eligibility for Funds), to apply for the grant program;

(3) An impact statement detailing the adverse or positive effect caused by the event(s) described in §4.32(a) of this title on the local governmental entity;

(4) Information on the community's efforts to secure other funding sources;

(5) A detailed financial plan for the project;

(6) A summary of the extent to which the local governmental entity has used its existing resources to promote local economic development and to promote private investment to create or retain jobs in the area;

(7) Efforts made by the government entity to retain or recruit qualified businesses;

(8) The amount of any previously awarded funds under this program and the number of jobs created from this award; and

(9) The anticipated number of new direct permanent jobs to be created or retained and the economic benefit to the community if the application is successful and the project is funded.

§4.36. Processing and Review of Application.

(a) The local governing body will submit applications for the program to the Director of the Texas Military Preparedness Commission.

(b) Applications or additional information received after the application deadline will not be considered.

(c) The Texas Military Preparedness Commission will:

(1) Publicize the program to potential applicants and provide grant solicitation information; and

(2) Evaluate each application for completeness.

(d) The Commission may assist a local government entity in applying for a grant.

(e) The Director will:

(1) Appoint a review panel consisting of himself and two to four full-time employees from the Office of the Governor evaluate applications; and

(2) Appoint a review panel chairman.

(f) The Review Panel will:

(1) Review applications, score, and make recommendations to the governing board;

(2) Provide evaluations and recommendations for grant awards for all grant applications received based on but not limited to the following criteria:

(A) If the effect on the local governmental entity is adverse or positive;

(B) If the effect on the local governmental entity is positive and if that affect was a result of the United States DoD base realignment and closure process;

(C) The significance of the number of jobs lost, gained or retained in relation to the workforce in the local governmental entity's jurisdiction and the effect on the area's current and/or projected economy and tax revenue;

(D) The extent to which dislocated defense workers will be retrained and/or retained as qualified employees within the defense community;

(E) The extent to which the local governmental entity has used its existing resources to promote local economic development;

(F) The amount of any grant(s) that the local governmental entity has previously received under this subchapter;

(G) The anticipated number of jobs to be created or retained in relation to the amount of the grant sought;

(H) The extent to which the grant will affect the region in which the local governmental entity is located; and

(I) If the project will have a negative effect on the encroachment of a defense base within the governmental entity's defense community.

(g) The Governing Board will:

(1) Review and score applications using the same criteria as the Review Panel;

(2) Ensure that one defense community is not favored over another in approving or disproving funding;

(3) Review and take into consideration those recommendations of the Review Panel and the governing board's own score;

(4) Review and approve or disapprove the award of the grant by a roll call majority vote; and

(5) Provide a statement of explanation for each application approved or disapproved that is not in agreement with the Review Panel recommendations.

§4.37. Availability of Funds.

(a) Funds commitment. Once approved by the governing board for an award, program money becomes committed to the awardee subject to the availability of funds.

(1) If the Commission determines that a qualified Defense Economic Adjustment Assistance Grant Program awardee proposal has been rejected by the federal agency or other financial partners, the commitment of funding previously committed will be withdrawn and the funding amount re-allocated to other applicants. The awardee will be given 30 days to renegotiate financial arrangements prior to withdrawal of the state program commitment.

(2) If the Commission has determined that an awardee has secured final approval from federal agencies and other financial partners, program funds will be committed to the awardee, subject to availability of funds.

(3) If the only partner in the project is the local governmental entity, funds will be committed to the entity upon final approval and encumbrance of funds by the awardee.

(b) Non-availability of funds. The Commission expects that availability of program funds will decrease significantly as the state funding biennium progresses. When all monies appropriated by the Texas Legislature to the Commission for a funding biennium have been committed to qualified awardees, remaining applicants shall be notified that funds are no longer available.

(c) The Commission may offer less funding than is requested by the applicant.

§4.38. Awardee Responsibilities.

In order to receive disbursement of grant program funds that have been committed to them, awardees will be required by contract with the Office of the Governor to:

(1) Have a system established in writing to ensure that appropriate officials provide necessary internal reviews and approvals for

the expenditure of funds and for monitoring project performance and adherence to federal award and/or state terms and conditions;

(2) Have financial management systems that meet the requirements of the Commission;

(3) Retain financial management records, supporting documents, statistical records, and other materials pertinent to the award for a period of three or more years following submission of the final project report and make these records available to the Commission upon request;

(4) Be responsible for performing the duties and tasks described under all project grant agreements with federal, state and other financial partners;

(5) Provide the Commission with copies of all project documentation required by federal or other financial partners;

(6) Provide project demonstrations, site inspections, photo or other additional documentation, including written materials to substantiate benefit to the Texas economy, as requested by the Commission;

(7) Honor intellectual property rights of project participants as outlined in any agreements made to facilitate fulfillment of award activities;

(8) Agree that the award may be suspended or terminated if the awardee fails to comply with Commission terms and conditions of the award or if the financial partnership is suspended or terminated;

(9) Agree that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Defense Economic Adjustment Assistance Grant Program based on grounds of race, color, national origin, religious affiliation, handicap, or sex;

(10) Agree that the Commission shall not be held liable in the event of damages to persons or property which may occur in the course of activities conducted as a result of the award or its cancellation or withdrawal; and

(11) Agree to other such terms and conditions as may be stipulated in the contract.

§4.39. Commission and Office Responsibilities.

(a) In carrying out its duties and responsibilities under the Act, the Commission shall:

(1) Solicit grant applications and publicize application deadlines;

(2) Establish and conduct the evaluation and award process in a responsive manner to maximize the opportunity to acquire federal and other funding;

(3) Develop contracts with awardees that include sufficient performance measures, audit requirements, and reporting requirements to ensure prudence and due diligence in the expenditure of state funds; and

(4) Minimize reporting requirements that may be repetitive or reporting required by federal grant agencies or unnecessary for the effective monitoring of the program.

(b) Waivers. The executive director may waive any provision of this subchapter upon a finding that the public interest would be furthered by granting the waiver.

§4.40. Reporting Responsibilities.

(a) Disbursement of funds will be made in accordance with the terms of the contract.

(b) After completion of the project, the awardee will provide the following milestones and updates as required by the contract.

(c) Throughout the project period, the awardee must provide copies of all reports required by federal agencies pursuant to the terms of individual federal grants received, within 30 days of their submission to the granting agencies.

(d) As a performance measure to demonstrate economic benefit to the State of Texas, for two years upon completion of the project the governmental entity shall submit quarterly reports indicating the number of qualified jobs created or retained and the average annual salary for each position.

(e) Failure to submit reports in a timely and satisfactory manner may result in the withholding of funds due or requested by the awardee. Failure to document post-completion requirements may result in the return of funds to the Commission as set forth in the contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904157
Aaron Demerson
Executive Director, Economic Development and Tourism
Office of the Governor
Earliest possible date of adoption: November 1, 2009
For further information, please call: (512) 936-0100



PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 74. CREDIT SERVICES ORGANIZATIONS

The Office of the Secretary of State proposes to reorganize Chapter 74, concerning credit services organizations, by repealing §§74.1 and 74.21 - 74.23 and proposing new §§74.1 - 74.3. The non-substantive changes clarify the rules, update the mailing address for the Office of the Secretary of State, provide the secretary of state's website, and remove references to specific required forms by name.

Additionally, new §74.3(b) provides for cancellation of a surety bond or account two years after the organization ceases operations at the location for which the surety bond was established, clarifies the meaning of "maintained" as used in subsection (a), and reflects that the secretary of state will authorize return of funds from a previously established surety account upon proper filing of information pertaining to a newly established surety account.

FISCAL NOTE

Leigh A. Joseph, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the sections are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Joseph has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to view the rules as corrected. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

COMMENTS

Comments on the proposed repeals and new rules may be submitted in writing to: Leigh A. Joseph, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, November 2, 2009.

1 TAC §§74.1, 74.21 - 74.23

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal of §§74.1 and 74.21 - 74.23 is proposed under the authority of §393.104 and §393.407(b), Texas Finance Code, which provide for the secretary of state to set fees and require information to be submitted as necessary to enforce §393.407, Texas Finance Code, respectively.

Chapter 393, Texas Finance Code, is affected by these rules.

§74.1. *Registration of Credit Services Organizations.*

§74.21. *Fee.*

§74.22. *Registration of a Credit Services Organization.*

§74.23. *Surety Bond, Surety Account.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904169
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: November 1, 2009
For further information, please call: (512) 463-5562



1 TAC §§74.1 - 74.3

STATUTORY AUTHORITY

New §§74.1 - 74.3 are proposed under the authority of §393.104 and §393.407(b), Texas Finance Code, which provide for the secretary of state to set fees and require information to be submitted as necessary to enforce §393.407, Texas Finance Code, respectively.

Chapter 393, Texas Finance Code, is affected by these rules.

§74.1. *Registration of Credit Services Organizations.*

(a) A registration statement will be accepted for filing only upon submission of a completed registration form and payment of the applicable fee.

(b) The registration statement form is available on the secretary of state web site at www.sos.state.tx.us/statdoc/statforms or may be obtained by writing the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. See Form 2801.

(c) A registration statement must provide:

(1) the name and address of the credit services organization;

(2) the name and address of any person who directly or indirectly owns or controls 10% or more of the outstanding shares of stock in the credit services organization;

(3) a copy of the surety bond or surety account notice for each of the credit services organization's locations, or a statement explaining why §393.302, Texas Finance Code is not applicable;

(4) a full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization, or a sworn statement that states that there has been no litigation or unresolved complaint with a governmental authority of this state relating to the operation of the credit services organization.

(d) The effective date of a registration statement is the date on which the secretary of state receives the completed registration form and payment of the applicable fee.

§74.2. Fee.

The filing fee for registering or renewing the registration of a credit services organization is \$100.

§74.3. Surety Bond, Surety Account.

(a) If a credit services organization is required to obtain a surety bond or establish a surety account, the surety bond or surety account shall be for an amount of \$10,000. The surety bond must be issued by a surety company authorized to do business in Texas. The surety account must be established and maintained at a federally insured bank or savings and loan association located in Texas and notification of the depository, the trustee, and the account number shall be filed with the secretary of state. See Forms 2802, 2803.

(b) The surety bond or account of a credit services organization must be maintained until the second anniversary of the date on which the organization ceases operations at the location for which the surety bond was established.

(1) The surety bond or account is considered "maintained" if the credit services organization has an established surety bond or surety account in the requisite amount and has filed the required information stated in subsection (a) of this section for the established surety bond or surety account with the secretary of state.

(2) The secretary of state will authorize return of funds from a previously established surety account upon a credit services organization's filing the required information stated in subsection (a) of this section for a newly established surety account.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904168

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-5562



CHAPTER 76. USE OF A DECEASED INDIVIDUAL'S NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS

The Office of the Secretary of State proposes to reorganize Chapter 76, concerning property rights, by amending §76.1 and repealing §76.11. The non-substantive changes clarify the rules, update the mailing address for the Office of the Secretary of State, provide the secretary of state's website, and remove references to specific required forms by name.

FISCAL NOTE

Leigh A. Joseph, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the sections are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Joseph has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to view the rules as corrected. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

COMMENTS

Comments on the proposed amendment and repeal may be submitted in writing to: Leigh A. Joseph, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, November 2, 2009.

1 TAC §76.1

STATUTORY AUTHORITY

The amendment of §76.1 is proposed under the authority of §26.006(b), Texas Property Code, which provides for the secretary of state to prescribe forms for registration of property rights.

Chapter 26, Texas Property Code, is affected by this rule.

§76.1. *Registration of Claim.*

(a) A [The] registration of claim will be accepted for filing only upon submission of a completed registration [claim] form and payment of the applicable fee.

(b) The effective date of a registration of claim is the date on which the secretary of state receives the completed registration form and payment of the applicable fee. [The registration will be effective as of the date of receipt by the secretary of state, or a registration of claim which complies with §76.11 of this title (relating to Registration of Claim Form) and the Texas Property Code, Chapter 26; and receipt of the filing fee specified in the Texas Property Code, Chapter 26.]

(c) A registration of claim must be verified and include:

- (1) the name and date of death of the deceased individual;
- (2) the name and address of the claimant;
- (3) a statement of the basis of the claim; and
- (4) a statement of the right claimed.

(d) A registration form designed for the purpose of complying with Chapter 26, Texas Property Code is available on the secretary of state web site at www.sos.state.tx.us/statdoc/statforms or may be obtained by writing the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. See Form 3701.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904170

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-5562



1 TAC §76.11

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal of §76.11 is proposed under the authority of §26.006(b), Texas Property Code, which provides for the secretary of state to prescribe forms for registration of property rights.

Chapter 26, Texas Property Code, is affected by this rule.

§76.11. *Registration of Claim Form.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904171

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-5562



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER E. DATE PALM LETHAL DECLINE QUARANTINE

4 TAC §19.51

The Texas Department of Agriculture (the department) proposes an amendment to §19.51 in order to expand the quarantined area for the Date Palm Lethal Decline Quarantine. The amendment is made to add to the quarantined area a 2-mile area surrounding the palms infected with the date palm lethal decline at one site in Kleberg County. In late June of 2009, some of the sabal palms and date palms located in Kleberg County were suspected to be infected with the date palm lethal decline disease. Consequently, samples from the apparently infected sabal palms and date palms were collected and analyzed for the disease by the Texas Plant Disease Diagnostic Laboratory at College Station. The test results, received on or about July 25, 2009, showed 3 of the 10 samples to be positive for the date palm lethal decline disease. Because the three infected palms are located within approximately 100 feet of one another, they are considered as originating from one site for establishment of the quarantined area. The amended section was adopted on an emergency basis on August 3, 2009, as published in the August 21, 2009, issue of the *Texas Register* (34 TexReg 5625) to prevent spread of the date palm lethal decline. The amendment will facilitate treatment of the disease vectors and restrict movement of the quarantined articles located within two miles of an infected tree as described in the Date Palm Lethal Decline Quarantine.

The department believes it is necessary to take this action to prevent the spread of the date palm lethal decline into non-infected areas of Texas. The palm nursery industry, landscapers, homeowners and others who use the quarantined palms are in peril because without the amendment, chances of these palms becoming infected with the disease increase significantly. Treatment options to control the disease are very limited. Moreover, once the spear leaf has died due to the disease, scientists recommend removal of the tree as soon as possible.

Amended §19.51 adds a 2-mile area surrounding the three infected palms occurring in close proximity at one site in Kleberg County of Texas to the quarantined area.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section, as proposed.

Dr. Nilakhe has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amended section will be reduction in the spread of the date palm lethal decline disease due to manmade activities. There would be no adverse economic impact on the small and/or micro-businesses that produce or sell the disease host palms since none are located in the proposed quarantined area. Consequently, economic impact statement and regulatory flexibility analysis are not provided.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment to §19.51 is proposed under the Texas Agriculture Code (the Code) §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles.

The Code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.51. Quarantined Areas.

The quarantined areas are as follows:

(1) Cameron, Hidalgo, Nueces, and Willacy counties of Texas, ~~and the~~

(2) The area within two miles of palm trees infected with the date palm lethal decline disease located at the following site in Kleberg County of Texas.

(A) Latitude 27.52701 N and longitude 97.88132 W.

(B) Detail information on the areas described in subparagraph (A) of this paragraph may be obtained from Regulatory Programs Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(3) The State of Florida.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904081

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-4075



TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

The Office of the Governor, Texas Film Commission (Commission) proposes amendments to §§121.1 - 121.12 and §121.14; and the repeal of §121.13, concerning the Texas Moving Image Industry Incentive Program.

The amendments and repeal are proposed due to the passage of House Bill (HB) 873 by the 81st Legislature. This legislation amended the incentive program that will be offering grants up to 15% of total in-state spending to both live action and animated feature films, television programs and visual effects projects and 5% of total in-state spending to commercials, reality televi-

sion programs, instructional and educational videos and video games.

Proposed §121.1 sets forth the background and purpose of the program to include the amendments to the rule reflecting the expansion of the program and appropriation. The 81st Legislature appropriated \$30M per fiscal year for FY 2010 and FY 2011 out of the General Revenue Fund.

Proposed §121.2 sets forth the amended definitions of the program. Definitions were amended to reflect the expansion of the program and clearly explain items that were vague and incomplete based on the functioning of the program. Definitions were deleted for elements eliminated by the amended legislation.

Proposed §121.3 sets forth the amended specific eligibility requirements for an entity to apply for funds for feature films, television programs, reality television projects, commercials, video games, educational or instructional videos and visual effects projects.

Proposed §121.4 sets forth the specific types of projects ineligible to apply for funds. The amendment is proposed to delete the exclusion of reality television, talk shows, game shows, educational or training videos since all are now included as eligible projects in HB 873.

Proposed §121.5 sets forth eligible and ineligible in-state spending that can be used to calculate an entity's grant amount. The amendment is proposed to reflect changes in wage caps set forth in HB 873. Also, the amendment sets forth specific details of compensation and reimbursements included in the program and explicit list of expenditures not included.

Proposed §121.6 titled Maximum Grant is changed to Grant Awards. It sets forth the option of awards to the applicants for film, television programs and visual effects projects for Texas Spend Option or Texas Wage Option. It also sets forth awards for reality television, commercials, video games, educational and instructional videos and visual effects projects for commercials and educational or instructional videos.

Proposed §121.7 titled Underused Areas is amended to reflect new nomenclature created in HB 873, Underutilized and Economically Distressed Areas. It sets forth the grant amounts for entities qualifying for underutilized and economically distressed area provision.

Proposed §121.8 sets forth the application requirements and entity responsibilities and is amended to make clarifications of the application process.

Proposed §121.9 sets forth the amending and clarification of the application processing and review procedures conducted by the Commission and the Financial Services Division of the Office of the Governor.

Proposed §121.10 sets forth the reasons for an entity's disqualification from the program. The amendment is proposed to clarify content clause.

Proposed §121.11 sets forth the Commission's procedures for verifying Texas expenditures. The amendment is proposed to give greater clarification and specificity to procedures for the determination and verification of Texas expenditures.

Proposed §121.12 sets forth the requirements for disbursement of funds, amendments clarify procedures.

Proposed §121.13 is repealed since additional funding source provisions were eliminated from HB 1.

Proposed §121.14 sets forth the parameters for revocation and recapture of incentives.

Bob Hudgins, Director of the Texas Film Commission, has determined that there will be no fiscal implications to the state or to local governments as a result of the proposal. No cost to either government or the public will result from the proposed amendments and repeal. There will be no impact on small businesses or micro-businesses.

Mr. Hudgins has also determined that the public benefit anticipated as a result of the proposal is a clearer understanding of the program's scope and participation in the program. No economic costs are anticipated to persons who are required to comply with the proposed amendments and repeal.

Written comments on the proposal may be hand delivered to the Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701, mailed to P.O. Box 12428, Austin, Texas 78711-2428, or faxed to (512) 463-1932 and should be addressed to the attention of Michael Bryant, Assistant General Counsel. Comments must be received within 30 days of publication of the proposed amendments and repeal in the *Texas Register*. A Public Hearing is scheduled for 9:00 AM, Monday, October 26, 2009 at the Texas State Capitol, Room E1.028.

13 TAC §§121.1 - 121.12, 121.14

The amendments are proposed pursuant to the Texas Government Code, §485.022, which directs the Commission to develop a procedure for the submission of grant applications and the awarding of grants, and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

No other codes, statutes, or articles are affected by this proposal.

§121.1. Background and Purpose.

(a) Background.

(1) The Texas Moving Image Industry Incentive Program offers grants based upon eligible expenditures within the state [equal to 5% of total in-state spending, including wages paid to Texas residents].

(A) Feature Films, Television Programs and Visual Effects Projects for Feature Films and Television Programs that choose the Texas Spend Option are eligible to receive grants of up to 15% of total eligible in-state spending.

(B) Feature Films, Television Programs and Visual Effects Projects for Feature Films and Television Programs that choose the Texas Wage Option are eligible to receive grants of up to 25% of eligible wages paid to Texas residents.

(C) Digital Interactive Media Productions (Video Games), Commercials, Educational or Instructional Videos, Reality Television Projects and Visual Effects Projects for Commercials and Educational or Instructional Videos are eligible to receive grants equal to 5% of total eligible in-state spending.

(2) Grants are available upon project completion [to feature films, television programs, commercials, and video games]. Both live-action and animated projects are eligible. These grants are in addition to the state's ~~own~~ existing Sales Tax Exemptions.

(3) ~~[(2)]~~ The State of Texas has allocated \$30,000,000 ~~[\$10,000,000]~~ for fiscal year 2010 (September 1, 2009 to August 31, 2010) ~~[2008 (September 1, 2007 to August 31, 2008)]~~ and \$30,000,000 ~~[\$10,000,000]~~ for fiscal year 2011 (September 1, 2010 to August 31, 2011) ~~[2009 (September 1, 2008 to August 31, 2009)]~~ for the Incentive

Program. Applicants will not be able to receive funding until after September 1, 2009 ~~[2007]~~.

(b) Purpose.

(1) The Texas Moving Image Industry Incentive Program was implemented to increase employment opportunities for Texas industry professionals, as well as boost economic activity in Texas cities and the overall Texas economy. Rather than Texas being an exporter of talent, Texas can now attract a wide range of projects from traditional film and commercial productions to the technology driven animation, visual effects and video game productions.

(2) This program allows for growth of the indigenous segments of production. It is an important goal of this program to have Texas' talented workforce stay in Texas and realize real professional growth in the industry. The incentive program increases the value of the Texas workforce and the viability of the small businesses that rely on production activity, increasing Texas' capacity to take on more production activity and increasing Texas competitive edge.

(3) This program is not intended for on-going events or productions that are permanently located in the State of Texas. This includes, but is not limited to, news, sports and religious services.

§121.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--The potential financial recipient of the grant [either producing the project or the owner of the copyright].

(A) For feature films, television programs, reality television projects, educational or instructional videos, or visual effects projects for feature films, television programs, or educational or instructional videos, either the production company producing the project or the owner of the copyright.

(B) For commercials and visual effects projects for commercials, [this could be] the production company, Ad Agency, or client. [Only one application and applicant per project is allowed.]

(C) For video games, the game developer or game publisher.

(2) Assignee--A third party designated by the applicant as the recipient of the grant.

(3) ~~[(2)]~~ Business day--A day other than Saturday, Sunday or a legal Federal holiday.

(4) ~~[(3)]~~ Cast--An actor paid by the applicant or production company for performing a role in Texas ~~[All people who appear or perform in front of the camera]~~, including but not limited to, featured actors, extras, stunt performers, voice-over talent, hosts, judges, announcers and roles or performers that appear on a recurring basis ~~[and interviewees].~~

(5) Crew--An individual worker paid by the applicant or production company for work performed in Texas that is directly contracted and credited for a specific position. An individual may work in more than one position on a production.

(6) Digital interactive media production--A video game.

~~[(4)]~~ Department head--A manager or lead person who supervises and directs a department or group of one or more people; and who is ultimately responsible for the management of a particular division within a project.]

(7) ~~[(5)]~~ Eligible projects--Feature films, television programs, reality television projects, commercials, educational or

instructional videos, visual effects projects and video games that meet the qualifying requirements described in §121.3 of this chapter.

(8) Episodic television series--A television program consisting of multiple episodes of a single season.

(9) ~~[(6)]~~ Expended [Final expended] budget--The final verifying documentation submitted by an applicant at the completion of a project that shows the total eligible ~~[of]~~ in-state spending and ~~[at the completion of the project that]~~ includes all ~~[receipts, invoices, pay orders, and any other]~~ documentation considered necessary to show compliance with the requirements of the incentive program ~~[for audit]~~.

(10) Filmed--The creation or digital manipulation of a moving image project; the actual production activity for various industry segments:

(A) For live action feature film, television program, reality television, educational or instructional video, or commercial projects, the production of the project involving the capture of images by a camera.

(B) For animated feature film, television program, commercial, or educational or instructional video projects, the creation of computer generated digital images or the use of a camera to film with stop motion or time lapse photography.

(C) For video games, the use of computers and software to create interactive digital images and visual effects.

(D) For visual effects projects, the finishing of a feature film, television program, commercial, or educational or instructional video with the creation of visual effects including, but not limited to, editing, visual effects, sound effects, music or animation.

(11) Filming day--A day of production as defined in paragraph (29) of this section.

(12) ~~[(7)]~~ Game console--An electronic device or machine used by consumers primarily for the purpose of playing video games, including, but not limited to, the Nintendo Wii, the Sony PlayStation 3, the Sony PlayStation 2 and the Microsoft Xbox360.

(13) ~~[(8)]~~ Goods and services--Physical products and services domiciled and used in Texas that are directly attributable to the production of a project including ~~[that include]~~, but ~~[are]~~ not limited to, contractors, subcontractors and service providers, and product or equipment purchases, rentals and leases.

(14) ~~[(9)]~~ Handheld console--A portable electronic device used by a consumer primarily for the purpose of playing video games, including, but not limited to, the Sony PlayStation Portable, the Nintendo DS, the Nintendo DSi, the Nintendo Game Boy Advanced and the Nintendo Game Boy Color.

(15) ~~[(10)]~~ Ineligible projects--Projects that do not qualify for the grant, as stated in §121.4 of this chapter.

(16) ~~[(11)]~~ In-state spending (Texas spend)--The eligible amount of money spent in Texas ~~[by a production company]~~ during pre-production, production and postproduction of the project.

(17) Interstitial television program--Short television programming shown between regularly scheduled programs or events.

(18) Loan-out company--A company controlled by the loaned-out employee.

(19) ~~[(12)]~~ Mobile electronic--A portable electronic device used by a consumer for the purpose of mobile computing and communication, including, but not limited to, personal digital assistants (PDAs) and mobile phones.

(20) Moving image project--An eligible project as defined in §121.3 of this chapter.

(21) Music performance production--Productions featuring musical performances that are more than 30 minutes in length.

(22) Music video--Productions featuring musical performances that are less than 30 minutes in length.

(23) ~~[(13)]~~ Pass through company--A company or person that acts as an agent or broker for companies or persons outside of Texas to provide goods, ~~[or]~~ services or labor for the purpose of taking advantage of the Texas Moving Image Industry Incentive Program.

(24) ~~[(14)]~~ Personal computer--An electronic device or machine used by a consumer for a variety of applications, including playing games. Games for this platform include those which play on the computer's CPU, as well as web and online game applications that are played using the personal computer.

(25) ~~[(15)]~~ Physical production--The period encompassing pre-production, production, and postproduction.

(26) Postproduction--The period of physical production that occurs after the end of production, as defined in paragraph (29) of this section; including but not limited to, editing, music, sound, visual effects and animation.

~~[(16)]~~ Postproduction expenditures--Expenditures that occur after the end of production, as defined in paragraph (19) of this section; including, but not limited to, editing, music, sound, and visual effects.]

(27) ~~[(17)]~~ Pre-production--The period of physical production that occurs before the start of production as defined in paragraph (29) of this section ~~[where preparations are made for principal photography]~~.

(28) ~~[(18)]~~ Principal start date--

(A) For live action feature film, television program, reality television, educational or instructional video or commercial projects, this is the first day of principal photography.

(B) For video game and animated projects, this is the first day of production.

(C) For visual effects projects, this is the first day of the stand alone finishing process including, but not limited to, the editing, visual effects, sound, music or animation created for feature films, television programs, commercials or educational or instructional videos.

(29) ~~[(19)]~~ Production--~~[has different definitions for film, television, commercial, and video game projects.]~~

(A) For live action feature film, television program, reality television, educational or instructional video or commercial projects, this is the period of physical production between the first and last days of principal photography, inclusive.

(B) For video game and animated projects, this is the period of physical production between the end of pre-production and the creation of the gold master or completion of the project.

(C) For visual effects projects, this is the stand alone finishing process including, but not limited to, the editing, visual effects, sound, music or animation created for a feature film, television program, commercial, or educational or instructional video project.

(30) ~~[(20)]~~ Production company--A film production company, television production company, video game developer, commercial production company, visual effects production company or post-production company ~~[film and television production company]~~.

(31) ~~[(21)]~~ Series of commercials--More than one commercial created in a contiguous production period for the same client ~~[and promoting the same product, service, or idea].~~

(32) Series of educational or instructional videos--More than one educational or instructional video created in a contiguous production period for the same client.

(33) ~~[(22)]~~ Stand-alone arcade machine--An electronic device used by a business or consumer solely for bona fide amusement purposes that reward the player exclusively with non-cash merchandise prizes or a representation of value redeemable for those items, as outlined in Texas Penal Code §47.01.

~~[(23)]~~ Texas crew--An individual directly employed by the production company that is involved in the creation of this specific project.]

(34) ~~[(24)]~~ Texas resident--An individual who is permanently domiciled ~~[has resided]~~ in Texas for at least 120 days prior to the principal start date of the project, unless enrolled as a full-time student at a Texas Institution of Higher Education, as defined by Texas Education Code §61.003; and has completed a Declaration of Texas Residency Form.

(35) Texas spend option--Feature films, television programs and visual effects projects for feature films and television programs may choose a total spending provision to determine their grant amount that will include all eligible in-state spending (including eligible wages paid to Texas residents).

(36) Texas wage option--Feature films, television programs and visual effects projects for feature films and television programs may choose a wages only provision to determine their grant amount that will only include eligible wages paid to Texas residents.

(37) Underutilized and economically distressed area--

(A) Underutilized area--An area or municipality of the state that receives less than 15 percent of the total film and television production in the state during a fiscal year as determined by the Texas Film Commission. Areas or municipalities that receive in excess of 15 percent of the total film and television production in the state will be determined to include the area within a thirty mile radius from that area's largest municipality's city hall.

(B) Economically distressed area--An area within the above-determined thirty mile radius where the median household income does not exceed 75 percent of the median household income as determined by the Texas State Data Center, University of Texas San Antonio.

(38) Wages--Compensation paid to an individual for work performed. Payment methods may include, but are not limited to, direct payments, payments through an agent or agency, payments through a loan-out company or payments through a payroll service. Wages may include, but are not limited to, gross wages, per diems, employer paid Social Security (Old Age, Survivors, and Disability Insurance (OASDI)) payments, employer paid Medicare (MEDI) payments, employer paid Federal Unemployment Insurance (FUI) payments, employer paid State Unemployment Insurance (SUI) payments, employer paid Pension, Health and Welfare payments and employer paid Vacation and Holiday payments.

(39) Webisode--A short episode or series of episodes, either narrative or documentary, that is distributed initially as an Internet download or stream.

~~[(25)]~~ Underused area--Any area of Texas outside a 30-mile radius from Austin City Hall or Dallas City Hall.]

§121.3. Eligible Projects.

(a) A project may be eligible for a grant under the Texas Moving Image Industry Incentive Program if it is a permitted project listed in subsections (b) - (h) of this section ~~[below]~~ that meets the minimum requirements.

(b) Feature Films.

(1) A feature film is defined as any:

(A) live-action or animated for-profit production, narrative or documentary;

(B) that is more than 30 minutes in length; and

(C) that is produced for distribution in theaters or via any digital format, including, but not limited to DVD, internet, or mobile electronic device.

(2) Minimum Requirements:

(A) Feature films must have minimum in-state spending of \$250,000 ~~[\$1 million]~~.

(B) 60% ~~[80%]~~ of the filming ~~[production]~~ days must be completed in Texas.

(C) 70% of the total number of paid crew must be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

(D) 70% of the total number of paid cast, including extras, must be Texas residents.

(E) Animated feature films must have 70% of the combined total of paid crew and cast, including extras, be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

(F) For the purpose of calculating the 70% Texas resident ratio needed to qualify, individuals participating or appearing in the following manner will be excluded from the Cast or Crew calculation:

(i) Documentary subjects or interviewees; or

(ii) Musicians performing as part of a music performance production.

(c) Television Programs.

(1) A television program is defined as any:

(A) live-action or animated for-profit production, narrative or documentary, including, but not limited to:

(i) an episodic television series;

(ii) a miniseries;

(iii) a television movie ("MOW");

(iv) a television pilot; ~~[or]~~

(v) a television episode;

(vi) an interstitial television program;

(vii) a music performance production; or

(viii) a webisode;

(B) that is produced for distribution via broadcast, cable or any digital format, including, but not limited, to cable, satellite, internet, or mobile electronic device.

(2) Minimum Requirements:

(A) Television programs must have minimum in-state spending of \$250,000 [~~\$1 million per season~~].

(B) 60% [80%] of the filming [~~production~~] days must be completed in Texas.

(C) 70% of the total number of paid crew must be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

(D) 70% of the total number of paid cast, including extras, must be Texas residents.

(E) Animated television programs must have 70% of the combined total of paid crew and cast, including extras, be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

(F) For the purpose of calculating the 70% Texas resident ratio to qualify, individuals participating or appearing in the following manner will be excluded from the Cast or Crew calculation:

(i) Documentary subjects or interviewees;

(ii) Musicians performing as part of a music performance production; or

(iii) Litigants and witnesses in court room programs.

(d) Reality Television Projects.

(1) A reality television project is defined as any:

(A) live action for-profit production using unscripted content including, but not limited to:

(i) a reality show;

(ii) a contest or game show; or

(iii) a talk show;

(B) that is nationally syndicated and produced for distribution via broadcast, cable or any digital format, including, but not limited, to cable, satellite, internet, or mobile electronic device.

(2) Minimum Requirements:

(A) Reality television projects must have minimum in-state spending of \$250,000.

(B) 60% of filming days must be completed in Texas.

(C) 70% of the combined total of crew and cast, including extras, must be Texas residents.

(D) For the purpose of calculating the 70% Texas resident ratio to qualify, individuals participating or appearing in the following manner will be excluded from the Cast or Crew calculation:

(i) Talk show guests;

(ii) Game or contest show contestants;

(iii) Reality show participants;

(iv) Documentary subjects or interviewees; or

(v) Litigants and witnesses in court room reality programs.

(e) [~~(d)~~] Commercials.

(1) A commercial is defined as any:

(A) live-action or animated production;

(B) that is an individual commercial, series of commercials, music video, infomercial, or interstitial advertisement;

~~[(C) that is less than 30 minutes in length;]~~

(C) [~~(D)~~] that is made for the purpose of entertaining or promoting a product, service, or idea; and

(D) [~~(E)~~] that is produced for distribution via broadcast, cable or any digital format including but not limited to cable, satellite, internet, or mobile electronic device.

(2) Minimum Requirements:

(A) Commercials must have minimum in-state spending of \$100,000.

(B) 60% [80%] of the filming [~~production~~] days must be completed in Texas.

(C) 70% of the combined total of paid crew and cast, including extras, which are paid by the incentive applicant or production company, must be Texas residents.

(f) [~~(e)~~] Video Games.

(1) A video game is defined as any:

(A) piece of software that provides a user or users with a game to play for the purpose of entertainment or education, such as for military or medical simulation training [~~functions~~]; and

(B) that is created for a game console, personal computer, handheld console, mobile electronic or stand-alone arcade machine.

(2) Minimum Requirements:

(A) Video games must have minimum in-state spending of \$100,000.

(B) 60% [80%] of the filming [~~production~~] days must be completed in Texas.

(C) 70% of the combined total of paid crew and cast which are paid by the incentive applicant or production company, must be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

(g) Education or Instructional Videos.

(1) An Educational or instructional video is defined as any:

(A) live action or animated production;

(B) that is an educational or instructional video or a series of educational or instructional videos; and

(C) that is produced for distribution in an instructional or educational setting.

(2) Minimum Requirements:

(A) Educational or instructional videos must have minimum in-state spending of \$100,000.

(B) 60% of the filming days must be completed in Texas.

(C) 70% of the combined total of paid crew and cast, including extras, which are paid by the incentive applicant or production company, must be Texas residents.

(h) Visual Effects Projects.

(1) A Visual effects project is defined as the stand alone finishing of:

(A) a live-action or animated feature film, television program, educational or instructional video, or commercial;

(B) that is completed with the inclusion of visual effects including, but not limited to, editing, visual effects, sound effects, music or animation; and

(C) that is produced for distribution in theaters, instructional or educational settings, via broadcast, cable or any digital format, including but not limited, to cable, satellite, internet, or mobile electronic device.

(2) Minimum Requirements:

(A) Feature film and television program visual effects projects must have minimum in-state spending of \$250,000.

(B) Commercial and educational or instructional video visual effects projects must have minimum in-state spending of \$100,000.

(C) 60% of filming days must be completed in Texas.

(D) 70% of the combined total of paid crew and cast which are paid by the incentive applicant or production company must be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

§121.4. Ineligible Projects.

(a) The following types of projects are not eligible for grants under this program:

{{(1) unscripted television productions, such as reality shows;}}

(1) ~~[(2)]~~ pornography or obscene material, as defined by Texas Penal Code, §43.21;

(2) ~~[(3)]~~ news, current event or public access programming, or programs that include weather or market reports;

(3) local events or religious services;

(4) productions not intended for commercial, educational or instructional distribution;

{{(4) talk shows, game shows, questionnaire or contest shows;}}

(5) sporting events or activities;

(6) awards shows, galas or telethons or programs that solicit funds;

{{(7) educational, corporate, or training videos;}}

(7) ~~[(8)]~~ projects ~~[films]~~ intended for undergraduate or graduate course credit;

(8) ~~[(9)]~~ application software, system software, or middleware; ~~[or]~~

(9) ~~[(40)]~~ casino-type video games directly used in a gambling device, as pursuant to Texas Penal Code, §47.01; or~~[-]~~

(10) commercials or advertising for the State of Texas or any Texas state agency or department.

(b) Not every project will qualify for a grant. The State of Texas is not required to make grants to projects that include inappropriate content or content that portrays Texas or Texans in a negative fashion. As part of the preliminary application process, the Texas Film Commission will review the content ~~[script or game design]~~ document, and will advise the potential applicant on whether the content will exclude the project from receiving a grant.

(c) Once an approved project has been completed, the Texas Film Commission will review the final ~~[script or game]~~ content before issuing the grant, to ensure that revisions made during production have not created an extreme difference from the content as initially approved.

§121.5. Eligible and Ineligible In-State Spending.

(a) The following are eligible expenditures:

(1) Wages and per diems paid to Texas residents for work performed in Texas, including additional compensation paid as part of a contractual or collective bargaining agreement.

(A) For the purpose of calculating the grant amount ~~[for feature films, video games, and commercials;]~~ only the first \$1,000,000 ~~[\$50,000]~~ in wages for each job position ~~[in a 12-month period to each Texas resident, and only the first \$200,000 in wages in a 12-month period of each Texas resident working as a department head;]~~ will be included.

(B) Eligible wages include, but are not limited to:

(i) payments for gross wages;

(ii) per diem payments;

(iii) employer paid Social Security (OASDI) payments;

(iv) employer paid Medicare (MEDI) payments;

(v) employer paid Federal Unemployment Insurance (FUI) payments;

(vi) employer paid Texas State Unemployment Insurance (SUI) payments;

(vii) employer paid pension, health and welfare payments; and

(viii) employer paid vacation and holiday payments.

{{(B) For the purpose of calculating the grant amount for episodic television, only the first \$100,000 in wages in a 12-month period to each Texas resident, and only the first \$200,000 in wages in a 12-month period of each Texas resident working as a department head, will be included.}}

(2) Additional compensation or reimbursements paid to Texas residents including, but not limited to:

(A) mileage or car allowance;

(B) housing allowance; and

(C) box or kit rentals for use of personal equipment.

(3) Workers compensation insurance for Texas residents, but only if the premiums are paid to a Texas-based insurance company or broker.

(4) Payroll company service fees for Texas residents, but only if paid to a Texas-based payroll company that processes payroll within Texas.

(5) [(2)] Payments made to Texas companies for goods and services domiciled and used in Texas that are directly attributable to the physical production of the moving image project [feature film, television program, commercial or video games]. In the case of video games and animated projects, the amount attributed to pre-production and research and development costs will be limited to an amount not to exceed 30% of the project's overall in-state spending.

(6) [(3)] Payments for shipping on shipments originating in [items shipped from or within] Texas.

(7) [(4)] Air travel to and from Texas on a Texas-based airline, including American Airlines, Continental Airlines and Southwest Airlines, or on a Texas-based air charter service.

(8) [(5)] Rentals, leases and purchases of vehicles registered and licensed in the State of Texas or rented, leased or purchased from a Texas domiciled company or individual.

(9) [(6)] Music that is specifically created for the project and fees paid to Texas residents hired to compose [create], orchestrate and perform the music.

(10) [(7)] Legal fees paid to Texas-based lawyers or law firms that are directly attributable to the physical production of the moving image project.

(11) Internet purchases, but only if purchased from a Texas-based company or a retailer with a physical store or outlet in Texas. Items purchased must be shipped directly to Texas.

(b) The following are ineligible expenditures:

(1) Payments made to non-Texas companies.

(2) Payments made for goods and services not domiciled or used in Texas.

(3) Payments made for goods and services that are not directly attributable to the physical production of the moving image project.

(4) Payments made by video game and animated projects for pre-production costs that exceed 30% of the project's overall in-state spending.

(5) Expenses related to distribution, publicity, marketing, or promotion of the project.

(6) Payments for [Rental, Lease or Mortgage payments, that includes, but is not limited to utilities and insurance, on] facilities that are part of a [the] permanent/continuous business operation including, but not limited to, rental, lease or mortgage payments, utilities and insurance.

(7) Wages and per diems paid to non-Texas residents, including additional compensation paid as part of a contractual or collective bargaining agreement. Wages include, but are not limited to:

(A) payments for gross wages;

(B) per diem payments;

(C) employer paid Social Security (OASDI) payments;

(D) employer paid Medicare (MEDI) payments;

(E) employer paid Federal Unemployment Insurance (FUI) payments;

(F) employer paid Texas State Unemployment Insurance (SUI) payments;

(G) employer paid pension, health and welfare payments; and

(H) employer paid vacation and holiday payments.

(8) Payments made to pass-through companies.

(9) Fees for story rights, music rights or clearance rights.

(10) Additional compensation or reimbursements paid to non-Texas residents including, but not limited to:

(A) mileage or car allowance;

(B) housing allowance; and

(C) box or kit rentals for use of personal equipment.

(11) Workers compensation insurance payments for non-Texas residents.

(12) Payroll company service fees for non-Texas residents.

(13) Payments for shipments originating outside of Texas.

(14) Payments for mobile and landline telephone service if the service or billing address is not in Texas.

(15) Payments for alcoholic beverages, cigarettes and tobacco products.

(16) Payments to adult oriented businesses.

(17) Payments for entertainment including, but not limited to, parties, event tickets, movies, hotel mini-bar items, meals unrelated to the physical production of the project and personal gifts.

(18) Payments for tips and gratuities.

(c) The Texas Film Commission reserves the right to determine which expenses are eligible or ineligible. These lists are not all inclusive.

§121.6. Grant Awards [Maximum Award].

(a) Feature Films, Television Programs and Visual Effects Projects for Feature Films and Television Programs may choose to receive an incentive payment based on either the Texas Spend Option or the Texas Wage Option. Projects are required to choose an option when submitting an application to the program. The selected option may be changed after the application is submitted, but not after the formal grant agreement has been signed. Grant awards will be calculated as follows:

(1) Texas Spend Option - projects with total eligible in-state spending of:

(A) At least \$250,000 but less than \$1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(B) At least \$1 million but less than \$5 million will be eligible to receive a grant equal to 10% of eligible in-state spending.

(C) At least \$5 million will be eligible to receive a grant equal to 15% of eligible in-state spending.

(2) Texas Wage Option - projects with total eligible in-state spending of:

(A) At least \$250,000 but less than \$1 million will be eligible to receive a grant equal to 8% of eligible wages paid to Texas residents.

(B) At least \$1 million but less than \$5 million will be eligible to receive a grant equal to 17% of eligible wages paid to Texas residents.

(C) At least \$5 million will be eligible to receive a grant equal to 25% of eligible wages paid to Texas residents.

(b) Reality Television Projects, Commercials, Video Games, Educational or Instructional Videos and Visual Effects Projects for Commercials and Educational or Instructional Videos are eligible to receive a grant equal to 5% of total eligible in-state spending.

~~{{(a) Feature Films. The maximum grant amount for a feature film is \$2 million.}}~~

~~{{(b) Television Programs. The maximum grant amount for a television program is \$2.5 million. This is for an entire season of an episodic television series.}}~~

~~{{(c) Commercials. The maximum grant amount for a television commercial, series of commercials, music video, infomercials or interstitial is \$200,000.}}~~

~~{{(d) Video Games. The maximum grant amount for a video game is \$250,000.}}~~

\$121.7. Underutilized and Economically Distressed ~~[Underused]~~ Areas.

(a) Projects, not to include projects choosing the Texas Wage Option, that complete at least 25% of their total filming days ~~[production]~~ in underutilized or economically distressed ~~[underused]~~ areas may receive an additional 2.5% ~~[1.25%]~~ of total in-state spending. The additional 2.5% ~~[1.25%]~~ applies to all eligible spending in all areas of Texas; it is not restricted to the underutilized or economically distressed ~~[underused]~~-area spending.

(b) Feature Films, Television Programs and Visual Effects Projects for Feature Films and Television Programs that choose the Texas Wage Option and that complete at least 25% of their total filming days in underutilized or economically distressed areas may receive an additional 4.25% of eligible wages paid to Texas residents. The additional 4.25% applies to all eligible wages paid to Texas residents; it is not restricted to wages paid for work only in the underutilized or economically distressed area.

~~{{(b) The underused-area clause does not increase the maximum grant per project, but it does allow a project to reach the maximum more quickly.}}~~

\$121.8. Grant Application.

(a) Initial Submission.

(1) A Qualifying Application must include:

(A) A completed Qualifying Application Form for the Moving Image Industry Incentive Program;

(B) An itemized budget detailing only estimated Texas expenditures; and

(C) A content document:

(i) For Feature Films, Television Programs (except Episodic Television Series) and Visual Effects Projects for Feature Films and Television Programs, a full script.

(ii) For Episodic Television Series, the full script of the first episode to be filmed in Texas.

(iii) For Commercials, Educational or Instructional Videos and Visual Effects Projects for Commercials and Educational or Instructional Videos, the scripts, storyboards or detailed outlines/summaries of content.

(iv) For Video Games, the game design document or a detailed outline/summary of game content.

(v) For Reality Television Projects, a detailed outline/summary of program content.

(2) ~~{{(4)}}~~ Qualifying Applications Forms are available at the Texas Film Commission web site: [http://www.governor.state.tx.us/divisions/film/\[incentives/application\]](http://www.governor.state.tx.us/divisions/film/[incentives/application]), or by contacting the Texas Film ~~[File]~~ Commission if internet access is not available or special needs facilitation is required.

(3) ~~{{(2)}}~~ Applications will not be accepted earlier than 30 calendar days prior to a project's principal start date.

(4) ~~{{(3)}}~~ Applications must be received no later than 5:00 p.m. Central Time on the last business day prior to the principal start date.

(5) ~~{{(4)}}~~ Only one application and applicant per project is allowed.

~~{{(5) An application package must include:}}~~

~~{{(A) A completed Qualifying Application for the Moving Image Industry Incentive Program;}}~~

~~{{(B) An itemized budget of eligible Texas expenditures. Ineligible expenditures are not required; and}}~~

~~{{(C) A script.}}~~

~~{{(i) For feature films and television programs, a full script.}}~~

~~{{(ii) For episodic television, the full script of the first episode to be filmed in Texas; and subsequent episode scripts as available.}}~~

~~{{(iii) For commercials, the script and/or storyboard.}}~~

~~{{(iv) For video games, the game design document.}}~~

(b) Additional Requirements.

(1) Within 5 business days of the principal start date indicated on the qualifying application form, an ~~[An]~~ applicant for a Feature Film, Television Program, Reality Television Project, Video Game, Educational or Instructional Video or Visual Effects Project must confirm with the Texas Film Commission in writing, to include email, that production began on time~~;~~ within 5 days of the start date indicated on the application. If the start of the project is delayed for more than 30 days, an application may ~~[will]~~ be discarded and the production must reapply.

(2) Upon commencement of the production, an applicant may ~~[will]~~ be required to submit a crew and vendor/services contact list to the Texas Film Commission. The applicant may ~~[will]~~ also be required to show proof of the residency status of individuals hired to work on the project ~~[employees]~~.

\$121.9. Processing and Review of Applications.

(a) All applications will be reviewed in the order they are received.

(b) Initial Review.

(1) Each application will go through an initial review process when the qualifying application has been received.

(A) If a project submits an application with required materials, and meets all qualifications, the applicant will receive an email notifying them that the Texas Film Commission has received

their complete application and the preliminary award determination ~~[review]~~ process will begin.

(B) If a project submits an application without the required materials, but initially appears to meet the minimum qualifications, the applicant will receive an email notifying them that their application requires additional materials or documentation, and that not receiving them in a timely manner may result in an application being disqualified.

(C) If a project submits an application with or without required materials and does not meet the minimum qualifications, the applicant will receive an email notifying them that they do not qualify for the incentive program, but if minimum qualifications are met, the applicant may reapply before 5:00 p.m. Central Time on the last business day prior to the principal start date.

(2) ~~[After an email is sent to a qualifying applicant, the Texas Film Commission will contact the applicant to verify that all the information on the application is correct.]~~ Applicants will have the ability ~~[at that time]~~ to amend information on their application. The Texas Film Commission may determine whether an applicant's amendment(s) will require them to reapply or not.

(c) Preliminary Award Determination.

(1) During the preliminary award determination process, the Texas Film Commission will review the project's application and budget to identify eligible expenditures and to determine if the applicant meets the minimum program requirements for in-state spending, Texas filming days and Texas residency.

~~[(2) Texas Film Commission will provide a summary to the Governor's Office of Budget and Planning for verification and determination of the grant agreement.]~~

(2) ~~[(3)]~~ The Texas Film Commission will also review the project's content to determine if it is appropriate.

(3) If an application meets all minimum program requirements as determined by the Texas Film Commission, the applicant will receive an email notifying them that their application has been approved.

(4) If an application does not meet all minimum program requirements as determined by the Texas Film Commission, the applicant will receive an email notifying them that their application does not qualify for the incentive program.

(d) Grant Agreement.

(1) Upon Texas Film Commission approval of the Qualifying Application ~~[and additional materials]~~, a grant agreement will be executed between the Texas Film Commission and the applicant. The estimated grant amount will be based upon the applicant's estimated in-state spending ~~[with a 10% contingency included in the encumbrment. The project's application summary will be attached to the grant agreement].~~

(2) The grant agreement must be returned to the Texas Film Commission within 7 business days with original signatures.

(3) Feature Films, Television Programs and Visual Effects Projects for Feature Films and Television Programs that must choose between the Texas Spend Option and the Texas Wage Option to calculate their grant amount, will not be able to change the option selected once the grant agreement has been signed and returned to the Texas Film Commission.

(e) Periodic Tracking and Review. Once the grant agreement has been executed by both parties, the Texas Film Commission ~~[and/or~~

~~the Governor's Office of Budget and Planning]~~ may periodically review production activity including, but not limited to, in-state spending, production [shooting] locations and number of Texas residents hired, and may require documentation for all of the above.

(f) Encumbrance of Funds.

(1) Upon Texas Film Commission approval of a Qualifying Application and receipt of a signed Grant Agreement, the Office of the Governor will encumber funds for the project.

(2) The amount encumbered for a project will be equal to the estimated grant amount on the Grant Agreement plus a 10% contingency.

(3) To encumber funds, an applicant must have a Texas Payee Identification Number. Applicants without an existing Texas Payee Identification Number must submit a completed W-9 Form and a Texas Application for Payee Identification Number Form.

(4) The amount encumbered can be adjusted by the Office of the Governor if a project amends the estimated Texas spending amount on their application so that it affects their estimated grant amount by 10% or more.

(g) ~~[(f)]~~ Verifying Texas Residency.

(1) The applicant will be required to provide the Texas Film Commission with proof of the [each employee's] residency status of each Texas resident crew or cast member.

(2) The applicant can show proof of Texas residency by submitting completed Declaration of Texas Residency Forms for each crew or cast member. [providing a copy of each employee's I-9 form if it has been verified with a current Texas driver license or identification certificate. If the I-9 form is verified with a document other than a Texas driver license or identification certificate, the applicant must provide a copy of the employee's I-9 and a copy of one of the following documents:]

(A) To be considered a Texas resident, a crew or cast member must complete section I, II and III of the Declaration of Texas Residency Form. Section III must be completed with a valid Texas driver license, a valid Texas identification card or a current Texas voter registration.

(i) A full-time student of a Texas Institution of Higher Education, as defined by Texas Education Code §61.003, who does not have a Texas driver license, Texas identification card or Texas voter registration may complete section III of the form with a current student identification card issued by a Texas Institution of Higher Education.

(ii) A minor who does not have a Texas driver license, Texas identification card or Texas voter registration may have a Texas resident parent or legal guardian complete section III of the form.

(B) A representative of the applicant or production company must complete section IV of the Declaration of Texas Residency Form.

~~[(1) Current Texas driver license or identification certificate.]~~

~~[(2) Current Texas voter registration card.]~~

~~[(3) Current student identification card from a Texas Academic Institution.]~~

~~[(4) A utility bill in the employee's name that verifies residency at a Texas address at least 120 days prior to the principal start date.]~~

§121.10. Disqualification of an Application

(a) An application [applicant] may be disqualified at any time if a project does not meet the necessary requirements or if an application is incomplete. If a project is disqualified, the applicant will be notified by email. Applications that have been disqualified may be re-submitted with the required changes or additional information, no earlier than 30 calendar days before the principal start date, and no later than 5:00 p.m. Central Time on the business day preceding the principal start date.

(b) In the case of a change in principal start or completion date, the applicant must notify the Texas Film Commission in writing, to include [by] email, of the new principal start or completion date, and must give the reason(s) for the change. If the start of the project is delayed repeatedly or for more than 30 days, an application may be disqualified [will be discarded] and the production must reapply.

(c) An application may also be disqualified for the following reasons including, but not limited to:

- (1) Failure to submit required documents and notifications, or additional documents as requested;
- (2) Failure to meet minimum requirements [thresholds] for in-state spending, number of Texas residents hired, and/or [adequate] percentage of filming [production] days;
- (3) Submission of false information;
- (4) Inappropriate content as described in Texas Penal Code Annotated, §43.23 or content that portrays Texas or Texans in a negative fashion [described in Texas Penal Code Annotated §43.23]; [or]
- (5) Lack of available funding; or
- (6) [(5)] Ineligible project as listed in §121.4 of this chapter.

§121.11. Confirmation and Verification of Texas Expenditures.

(a) The Texas Film Commission will be responsible for collecting, authenticating and assembling final verifying [incentive] documentation from the applicant for review [productions for audit by the Governor's Financial Services Division]. The Texas Film Commission will perform the initial review, and a compliance audit will be performed by the Governor's Office Financial Services Division.

(b) An expended budget should [The following items must] be received by the Texas Film Commission within 60 days of completing Texas expenditures. The expended budget should be in a format acceptable to the Office of the Governor and should contain all final verifying documentation including, but not limited to:

- (1) A Texas Moving Image Industry Incentive Program Verification Worksheet confirming that all program requirements have been met and final verifying documentation is complete;
- (2) Expenditure reports that document all eligible Texas spending;
- (3) Copies of all invoices, receipts, pay orders and any other documentation considered necessary by the Office of the Governor for auditing the expenditure reports;
- (4) Completed Declaration of Texas Residency Forms for all Texas resident crew and cast members;
- (5) Crew and cast lists that document non-Texas resident crew and cast members;
- (6) Call sheets, production reports or production calendars that document all production days; and
- (7) Final content.

[(1)] A final expended budget, in a format acceptable to the Office of the Governor, Financial Services Division, reflecting all in-state spending and including all receipts, invoices, pay orders, and any other documentation considered necessary by the Financial Services Division for audit.

(A) [(2)] Feature films, television programs and visual effects projects for feature films and television programs must submit a copy of the final script or final content for review.

(B) [(3)] Commercials, [and] video games, reality television projects, educational or instructional videos and visual effects projects for commercials and educational or instructional videos must submit final content for review.

(8) [(4)] Additional documentation may be required including, but not limited to, the following:

(A) Financials, including all reports of expenditures.

(B) Proof of payment for expenditures.

(C) Feature Films, Television Programs and Visual Effects Projects for Feature Films and Television Programs that choose the Texas Wage Option and that spend less than \$5 million in eligible wages must provide expenditure reports documenting all eligible Texas spending (not just eligible wage spending) in order to establish the percentage for calculating their grant amount.

[(B)] Call sheets/Production reports

[(C)] Production Cost reports

[(D)] Video game production calendar

[(E)] Proof of employees' Texas residency

(c) An expended budget submitted in a format unacceptable to the Office of the Governor may be returned to the applicant for revision. The Texas Film Commission should receive the revised expended budget within 14 days of its return to the applicant.

(d) It is the responsibility of the applicant to ensure that the final verifying documentation submitted in the expended budget is correct and complete. Once the expended budget is accepted for review by the Texas Film Commission, the applicant will not be able to submit additional information unless requested to do so by the Office of the Governor.

§121.12. Disbursement of Funds.

(a) Disbursement of funds will not occur until the applicant or production company has paid all financial obligations incurred in the State of Texas, and a final compliance audit has been completed and approved.

(b) In the event of unpaid financial obligations in the State of Texas [disputed amounts], the Office of the Governor [Texas Film Commission] will determine whether or not to withhold [final] grant disbursement [approval], pending settlement.

(c) Payment Assignment.

(1) An applicant can assign payment of the grant to a third party.

(2) To assign payment the applicant must submit:

(A) A Texas Application for Payee Identification Number Form with Section IV completed; and

(B) An assignment agreement completed and signed by the applicant and assignee.

§121.14. Revocation and Recapture of Incentives.

(a) An applicant's eligibility for funds can be revoked after the project is completed for reasons such as obscene or inappropriate content, failure to meet minimum qualification requirements, failure to provide requested documentation [~~receipts of Texas expenditures~~], providing false information, or inability to complete the project.

(b) If an applicant has already received the grant and is determined to not meet a requirement in any way, the State of Texas [~~Texas Film Commission~~] can require that the applicant refund any sum of the grant money paid to the applicant by the State of Texas [~~Texas Film Commission~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904205

Michael Bryant

Assistant General Counsel

Texas Film Commission

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-9200

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13 TAC §121.13

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Film Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed pursuant to the Texas Government Code, §485.022, which directs the Commission to develop a procedure for the submission of grant applications and the awarding of grants, and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

No other codes, statutes, or articles are affected by this proposal.

§121.13. Additional Funding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904206

Michael Bryant

Assistant General Counsel

Texas Film Commission

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-9200

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.3

The Texas State Board of Dental Examiners (Board) proposes an amendment to §100.3, concerning organization and structure. The amendment is proposed to enact certain requirements imposed by Senate Bill 887, 81st Legislature, Regular Session, effective September 1, 2009, which increases the length of time a board member may serve on the Board.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be implementation of changes to the Dental Practice Act as a result of the passage of Senate Bill 887.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§100.3. Organization and Structure.

(a) - (b) (No change.)

(c) Terms of office. Members of the board serve staggered six-year terms. The terms of one-third of the members shall expire on February 1 of each odd-numbered year. A member may not serve more than two consecutive full terms [~~only one six-year term~~]. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

(d) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904097

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972

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CHAPTER 101. DENTAL LICENSURE

22 TAC §101.5

The Texas State Board of Dental Examiners (Board) proposes an amendment to §101.5, concerning staggered dental registrations. The amendment is proposed to enact certain requirements imposed by Senate Bill 887, 81st Legislature, Regular Session, Effective September 1, 2009, which allows dental licensees 30 days to pay license fees after initial licensure.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be the implementation of changes to the Dental Practice Act as a result of the passage of Senate Bill 887 and the timely payment of fees by dental licensee.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§101.5. Staggered Dental Registrations.

(a) - (e) (No change.)

(f) An initial license issued under this chapter on or after September 1, 2009 expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before that date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904100

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The Texas State Board of Dental Examiners (Board) proposes an amendment to §104.1, concerning continuing education re-

quirements. The amendment will clearly identify coursework requirements and delete expired portions of the rule.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be the revision of obsolete language relating to continuing education.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§104.1. Requirement.

As a prerequisite to the annual renewal of a dental or dental hygiene license, proof of completion of 12 hours of acceptable continuing education is required.

(1) (No change.)

(2) Effective September 1, 2008, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) - (C) (No change.)

(D) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 12-hour requirement.

(E) (No change.)

(3) Each [Effective January 1, 2005 through December 31, 2007, each] licensee shall complete [either] the jurisprudence assessment [OR three (3) hours of approved coursework in jurisprudence] every three (3) years. This requirement is in addition to the twelve (12) hours of continuing education required annually for the renewal of a license. [, in addition to the general 12-hour requirement.]

[(A) For the purposes of this section, "jurisprudence" refers to the body of statutes and regulations pertaining to and governing the licensee's practice, including relevant portions of the Texas Occupations Code, and the rules enacted by the Board.]

[(B) Coursework in jurisprudence may be through self-study or interactive computer courses, either of which must be verifiable and provided by those entities cited in Rule 104.2 of this title.]

[(C) Effective January 1, 2008, the jurisprudence requirement may only be met by taking the jurisprudence assessment once every three years.]

(4) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904109

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §104.2

The Texas State Board of Dental Examiners (Board) proposes an amendment to §104.2, concerning continuing education providers. The amendment updates the rule language to reflect current practice and terminology.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be clear and current information regarding Continuing Education Providers.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§104.2. Providers.

Continuing Education courses endorsed by the following providers will meet the criteria for acceptable continuing education hours if such hours are ~~either technical or scientific as related to clinical care and in content as~~ certified by the following providers:

(1) - (9) (No change.)

(10) National Dental Hygienists' [Hygienist's] Association, its constituent, and its component societies;

(11) - (15) (No change.)

(16) Texas Dental Hygiene Educators' [Educator's] Association;

(17) - (18) (No change.)

(19) American Dental Assistants Association and its constituent organizations; ~~and;~~

(20) The Compliance Division, LLC;

(21) Dental Compliance Specialists, LLC; and

(22) ~~[(20)]~~ Other entities ~~[providers as]~~ approved by the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904113

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §104.4

The Texas State Board of Dental Examiners (Board) proposes an amendment to §104.4, concerning continuing education penalties. The amendment updates the rule language to reflect current terminology.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be clarification regarding the applicability of the section. While the section did and continues to apply to all persons regulated by the agency, the "licensee/registant" language proposed in this amendment clearly indicates this application.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§104.4. Penalties.

(a) Each licensee and registrant shall attest during ~~on~~ the annual renewal process ~~application~~ that he/she is in compliance with the statutory requirements for continuing education.

(b) Falsification of a continuing education attestation is a violation of the Dental Practice Act and such false certification or the failure to attend and complete the required number of continuing education hours shall subject the licensee/registrant ~~dentist or dental hygienist~~ to disciplinary action.

(c) If it appears that the licensee/registrant has falsified the attestation, that matter will be referred to the Director of Enforcement of the State Board of Dental Examiners for proceeding as set forth in §107.100 of this title ~~[(relating to Receipt, Processing, and Coordination of Complaint)], §107.101 of this title [(relating to Guidelines for the Conduct of Investigation)]~~ and the Dental Practice Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904114

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.63

The Texas State Board of Dental Examiners (Board) proposes an amendment to §107.63, concerning informal disposition and alternative dispute resolution. The amendment is made for the purposes of clarification of process.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be a decrease in administrative costs to process agreed settlement orders.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners

no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§107.63. *Informal Disposition and Alternative Dispute Resolution.*

(a) - (d) (No change.)

(e) Consideration by the Board.

(1) All proposed agreed settlement orders, agreements or other recommendations shall be reviewed by the full Board for approval.

~~[(2) The name and license number of the licensee will not be made available to the board until after the board has reviewed and made a decision on the proposed agreed settlement order, agreement or recommendation.]~~

(2) ~~[(3)]~~ Upon an affirmative majority vote, the Board shall enter an order approving the proposed agreed settlement order, agreement, or recommendation. Said order shall bear the signature of the Presiding Officer and Board Secretary, or of the officer presiding at such meeting and shall be included in the minutes of the Board.

(3) ~~[(4)]~~ If the Board ~~[board]~~ does not approve a proposed settlement order, agreement, or recommendation, the licensee shall be so informed. The matter shall be referred by the Board to the Board Secretary and Executive Director ~~[executive director]~~ for consideration of appropriate action.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904115

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §107.69

The Texas State Board of Dental Examiners (Board) proposes new §107.69, concerning alternative informal assessment of administrative penalty. The new section is proposed in response to Senate Bill 887, 81st Legislature, Regular Session, effective September 1, 2009, which allows the Board to create rules to implement an alternative informal assessment of administrative penalty.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be to impose an administrative penalty which will provide an efficient procedure for disposing of minor administrative violations of the Dental Practice Act, while preserving the opportunity for a licensee to present information to the Board in his/her defense.

There is no anticipated impact on large, small or micro-businesses.

There is a minimal anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The section is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed new section affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§107.69. Alternative Informal Assessment of Administrative Penalty.

(a) Purpose and Construction. The purpose of this rule is to set forth a procedure for the imposition of an alternative informal assessment of administrative penalty pursuant to §264.0115, Dental Practice Act, for violations identified in §107.202 of this title, Disciplinary Guidelines and Administrative Penalty Schedule, as violations that do not involve the provision of direct patient care by a person licensed or registered under these rules.

(b) Notice of Intention to Impose Administrative Penalty, Response.

(1) Before an administrative penalty is imposed under this rule, the board shall provide a licensee/registrant who is alleged to have committed an administrative violation with a Notice of the allegations regarding an administrative violation.

(2) The Notice shall include, at a minimum:

(A) a clear statement of the violation, including a citation to the relevant section of the Board's rules and the Dental Practices Act;

(B) the amount of the penalty assessed for each violation; and

(C) a statement that the cited person may either pay the penalty or appeal the penalty in writing.

(3) The licensee/registrant may respond to the notice as follows:

(A) The licensee/registrant may pay the proposed administrative penalty; or

(B) The licensee/registrant may appeal the penalty in writing.

(4) The licensee/registrant must respond to the Notice within twenty (20) calendar days of receipt by the licensee/registrant of the Notice (if the Notice is presented in person) or within twenty (20) calendar days of the date the Notice is mailed, by certified mail, to the licensee/registrant (if the Notice is mailed).

(5) A report of the payments upon Notice of intention to impose administrative penalties shall be made to the board at the next regular meeting for approval.

(6) A penalty assessed under this section may consist only of a monetary penalty that does not exceed \$1,000.00 for each violation. The total amount of penalties assessed against a person under the Alternative Informal Assessment of Administrative Penalty may not exceed \$3,000.00 in a calendar year.

(7) A licensee/registrant who is assessed an administrative penalty under this section is entitled to a hearing under Chapter 2001, Government Code.

(c) Personal Appearance at an Administrative Penalty Conference.

(1) If, within twenty (20) calendar days of receipt of the Notice (if the Notice is presented in person) or of the date the Notice is mailed to the licensee/registrant (if the Notice is mailed), the licensee/registrant requests, in writing, an appeal of the penalty, an administrative penalty conference may be scheduled pursuant to this rule.

(2) If the licensee/registrant fails to respond to the Notice within twenty (20) calendar days, an administrative penalty conference may be scheduled pursuant to this rule.

(3) At an administrative penalty conference, the panel members may only consider assessing a monetary penalty equal to that imposed by the Alternative Informal Assessment of Administrative Penalty Standard Schedule or dismissal of the matter. The panel may not consider revocation, suspension, or any other sanction.

(d) Administrative Penalty Conference Procedure.

(1) Administrative penalty conferences shall be held by a panel of Board representatives consisting, at a minimum, of an attorney of the Board, and either the investigator responsible for the case or the Director of Enforcement, and a member of the Board.

(2) The Board will provide the licensee/registrant notice in writing of the time, date, and place of the administrative penalty conference. Such notification shall inform the licensee/registrant: of the nature of the alleged violation; that he or she may be represented by legal counsel; that the licensee/registrant may offer the testimony of such witnesses as he or she may desire; that the Board may be represented by one or more of its members and by legal counsel; and that he or she may request that the matter be considered by the Board according to procedures described in §263.007, Dental Practice Act. A copy of the Board's rules relating to the informal disposition of cases shall be enclosed with the notice of the administrative penalty conference. Notice of the administrative penalty conference, with enclosures, shall be sent by certified mail, return receipt requested, to the current address of the licensee/registrant on file with the Board.

(3) The administrative penalty conference shall be informal and will not follow the procedure established in State Office of Administrative Hearing (SOAH) rules for contested cases. The licensee/registrant, his or her attorney, and the Board representative and Board staff may question witnesses, make relevant statements, present affidavits or statements of persons not in attendance, and may present such other evidence as may be appropriate. Any documentary evidence received by the Board less than ten (10) days before the scheduled dates of the administrative penalty conference will not be considered by the panel.

(4) The administrative penalty conference shall be conducted by a representative of the Board. The Board's representative may call upon the Board's attorney at any time for assistance in

conducting the administrative penalty conference. The Board's representative may question any witness, and shall afford each participant in the administrative penalty conference the opportunity to make such statements as are material and relevant.

(5) The Board's representative may prohibit or limit access to the Board's investigative file by the licensee/registrant, his or her attorney, and the complainant and his or her representative.

(6) The Board's representative shall exclude from the administrative penalty conference all persons except witnesses during their testimony, the licensee/registrant, his or her attorney, the complainant, Board members, and Board staff.

(7) At the conclusion of the administrative penalty conference, the panel shall either recommend to close the case or impose penalties in accordance with this section. Closure of a case by the panel shall be given effect immediately without the necessity of presentation to the full Board.

(8) The licensee/registrant shall either accept or reject the administrative penalty assessment presented after the meeting. To accept the administrative penalty assessment, the licensee/registrant must sign the penalty assessment and return it to the Board with payment within ten (10) days of the date of the administrative penalty letter. Inaction by the licensee/registrant shall constitute rejection. If the licensee/registrant fails to notify the Board in writing or his/her intent to appeal or to accept the administrative penalty assessment in writing with payment included within ten (10) of receipt of payment, payment shall be considered late and additional fees will be due in accordance with Alternative Informal Assessment of Administrative Penalty Standard Schedule. If the licensee/registrant appeals the administrative penalty assessment, the matter shall be set for a hearing before an Administrative Law Judge (ALJ) at the SOAH.

(e) Reports of Imposition of Administrative Penalty.

(1) An imposition of an administrative penalty shall be a public record.

(2) The imposition of an administrative penalty shall not be considered a restriction or limitation on the license of the licensee/registrant and shall not be reported to the National Practitioner Data Bank.

(3) The citation, Notice, a written response or request for personal appearance by the licensee/registrant, any information provided to and any report of a panel of Board representatives, shall remain confidential, in accordance with §254.006, Dental Practice Act.

(f) Unpaid Administrative Penalties. If a licensee/registrant fails to pay an administrative penalty by the due date, the Board may set the case for a hearing. An ALJ of the SOAH shall hold the hearing. The ALJ shall make findings of fact and conclusions of law and issue to the Board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904119

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972

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SUBCHAPTER C. ADMINISTRATIVE
PENALTIES

22 TAC §107.202

The Texas State Board of Dental Examiners (Board) proposes an amendment to §107.202, concerning disciplinary guidelines and administrative penalty schedule. The amendment is proposed to enact certain requirements imposed by Senate Bill 887, 81st Legislature, Regular Session, effective September 1, 2009, which requires a standardized penalty schedule for violations of the new alternative informal assessment of administrative penalty rule.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be to fulfill the requirements of Senate Bill 887 which obliges the Board to adopt a standardized schedule of penalties when adopting rules to establish an Alternative Informal Assessment of Administrative Penalty.

There is no anticipated impact on large, small or micro-businesses.

There is a minimal economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§107.202. Disciplinary Guidelines and Administrative Penalty Schedule.

(a) - (c) (No change.)

(d) Administrative penalties may be imposed for the following violation categories as set forth in [Rule] §107.101 of this title [~~relating to Guidelines for the Conduct of Investigations~~] and the amount of penalty imposed shall be in accordance with this schedule as set forth:

(1) - (7) (No change.)

(e) Alternative Informal Assessment of Administrative Penalty, Standard Schedule. The standard sanctions outlined below shall apply to the alternative informal assessment of administrative penalty, §107.69 of this title, authorized under §264.0115, Dental Practice Act.

(1) A penalty assessed under this section may consist only of a monetary penalty that does not exceed \$1,000 for each violation. The total amount of penalties assessed against a person under this section may not exceed \$3,000 in a calendar year.

(2) The standard schedule for alternative informal assessment of administrative violations:

- (A) No Consumer Information--\$250.00;
- (B) Names of Dentists not Posted--\$250.00;
- (C) Fail to Display Registration (Dental office)--\$250.00;
- (D) Fail to Provide Records to Board--\$500.00;
- (E) Fail to Provide Records to Patient--\$500.00;
- (F) Fail to File Records Maintenance Agreement--\$250.00;
- (G) Fail to Notify Board of Change of Information--\$250.00;
 - (i) Dentists;
 - (ii) Hygienist;
- (H) Sanitation and Infection Control--\$500.00;
 - (i) Unsanitary Conditions;
 - (ii) Failure to comply with state, local, county laws;
 - (iii) Failure to properly sterilize or disinfect;
 - (iv) Healthcare workers - fail to comply with sanitation/health requirements;
- (I) False/Misleading Communications/Unlawful or Deceptive Advertising--\$250.00;
- (J) Specialty Announcement--\$250.00;
 - (i) Announcement of credential in non-specialty area;
 - (ii) Announcement when not certified as specialist;
- (K) Advertising - Testimonials--\$250.00;
- (L) Improper Use of Trade Name--\$500.00;
- (M) No Prosthetic Identification--\$250.00.

(3) If the Respondent fails to pay or appeal the administrative penalty by the due date, the penalty amount will double, not to exceed the statutory maximum penalty for each violation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904116

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.8

The Texas State Board of Dental Examiners (Board) proposes an amendment to §108.8, concerning records of the dentist. The amendment fulfills the intent of establishing standards for the use of radiographs while preventing outdated references in the future. This amendment is proposed based on comments received during the rule review for Chapter 104.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be: (1) clarification regarding standards for the use of radiographs and the practice of dentistry; and (2) reference to a source that provides appropriate guidelines for the use of radiographs that will not become obsolete in the future.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§108.8. *Records of the Dentist.*

(a) (No change.)

(b) A Texas dental licensee practicing dentistry in Texas shall make, maintain, and keep adequate records of the diagnoses made and the treatments performed for and upon each dental patient for reference, identification, and protection of the patient and the dentist. Records shall be kept for a period of not less than five years. Records must include documentation of the following:

(1) - (3) (No change.)

(4) Vital signs, including but not limited to blood pressure and heart rate when applicable in accordance with §108.7 of this title [~~(relating to Minimum Standard of Care, General)~~].

(5) (No change.)

(c) Further, records must include documentation of the following when services are rendered:

(1) (No change.)

(2) Findings and charting of clinical and radiographic oral examination;

(A) Documentation of radiographs taken and findings deduced from them, including radiograph films or digital reproductions.

(B) Use of radiographs, at a minimum, should be in accordance with ADA guidelines [set forth on "Dental Radiographic Examinations" published by the United States Department of Health and Human Services, October 1987, as amended or reprinted from time to time].

(3) - (7) (No change.)

(8) Written informed consent that meets the provisions of §108.7(6) of this title;

(9) - (12) (No change.)

(d) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904120

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §108.10

The Texas State Board of Dental Examiners (Board) proposes new §108.10, concerning notification of change of information. The new section is proposed to enact certain requirements imposed by Senate Bill 887, 81st Legislature, Regular Session, effective September 1, 2009, which requires a dentist to notify the Board within sixty (60) days of any change in the dentist's mailing address. The proposed new section also incorporates requirements from previously enacted legislation requiring dentists to notify the Board within sixty (60) days of any changes in the dentist's place of business or employer. While these requirements have applied to dentists by law, this proposed new section identifies the requirements by rule as well.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be: (1) the implementation of changes to the Dental Practice Act as a result of Senate Bill 887; (2) that up-to-date contact information will be provided to the Board by its licensees in a timely manner; and (3) that this requirement can be clearly identified by licensees in the rules.

There is no anticipated impact on large, small or micro-businesses.

There is a negligible cost to persons as a result of enforcing or administering this section in the form of minimal time and expense expended by the licensee to contact the Board regarding the changes.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments

must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The section is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed section affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§108.10. Notification of Change of Information.

Each dentist licensed with the Board shall notify the Board within sixty (60) days of any:

(1) change of address of the licensee's place of business;

(2) change of the licensee's employer; or

(3) change in the licensee's mailing address.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904121

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.1

The Texas State Board of Dental Examiners (Board) proposes an amendment to §114.1, concerning permitted duties. The amendment is proposed to enact certain requirements imposed by Senate Bill 455, 81st Legislature, effective September 1, 2009, which makes changes to the levels of supervision that dentists are required to maintain over dental assistants.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be: (1) the implementation of changes to the Dental Practice Act as a result of the passage of Senate Bill 455; and (2) that dentists will be allowed greater latitude in supervising dental assistants who have been properly trained and certified to perform certain tasks. This will improve access to dental healthcare for patients in the state as dentists and dental hygienists will have more time to focus their skills on more complex tasks.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§114.1. Permitted Duties.

(a) (No change.)

(b) A dentist may not delegate or otherwise authorize a dental assistant to perform any task for which a certificate is required under this section, unless the dental assistant holds the required certificate ~~[position or expose a dental X-ray unless the dental assistant holds a certificate of registration issued under §114.2 of this chapter].~~

(c) A dental assistant may perform tasks under a dentist's general or direct supervision. For the purposes of this section:

(1) "General supervision" means that the dentist employs or is in charge of the dental assistant and is responsible for supervising the services to be performed by the dental assistant. The dentist may or may not be present on the premises when the dental assistant performs the procedures.

(2) "Direct supervision" means that the dentist employs or is in charge of the dental assistant and is physically present in the office when the task is performed. Physical presence does not require that the supervising dentist be in the treatment room when the dental assistant performs the service as long as the dentist is in the dental office.

~~{(e) The employing dentist or dentist in charge must be physically present in the dental office when the delegated act is performed.}~~

(d) (No change.)

(e) The clinical tasks that a dental assistant can perform under general supervision are limited to:

(1) the making of dental x-rays in compliance with the Occupations Code, §265.005; and

(2) the provision of interim treatment of a minor emergency dental condition to an existing patient of the treating dentist in accordance with the Occupations Code, Section 265.003 (a-1). For purposes of this paragraph only, "existing patient" means a patient that the supervising dentist has examined in the twelve (12) months prior to the interim treatment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904125

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §114.2

The Texas State Board of Dental Examiners (Board) proposes an amendment to §114.2, concerning dental assistant radiology certificate. The amendment is proposed to enact certain requirements imposed by Senate Bill 887 and Senate Bill 455, 81st Legislature, Regular Session, effective September 1, 2009, which adds requirements to the Dental Assistant Radiology Certificate holders for registration display, address changes, registration fee payments, and continuing education requirements. For the purposes of clarity and rule economy, the language of §114.22 has been added as subsection (h). In addition, the title of the section has been changed for clarification and to indicate that the requirements of this section specifically apply to the Dental Assistant Radiology Certificate.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period the section is in effect, there will be limited fiscal implications for local or state government as a result of enforcing or administering the section.

There is an anticipated economic cost to persons who are required to comply with the section as proposed, arising from the cost of required courses and examinations, and incidental costs. There is no anticipated local employment impact as a result of enforcing the section as proposed.

Ms. Meek, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcement will be the improvement in the education, capabilities, and regulation of dental assistants who perform radiographic procedures on patients in the State of Texas. In addition, by allowing dental assistants who have been properly trained and certified to perform radiographic procedures, dentists and dental hygienists are free to focus their attention on more complex procedures. This will improve access to health-care for dental patients in the state.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore, the Board has determined that compliance with the proposed section will not have an adverse economic impact on small businesses when compared to large businesses. The requirements of this section will impact individuals who make application for registration, and would only impact small businesses who choose to pay course registration and examination fees for their dental assistant employees.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Part 5.

§114.2. Dental Assistant Radiology Certificate [Registration of Dental Assistants].

(a) A [Beginning on September 1, 2004, a] dental assistant may not position or expose dental x-rays unless the dental assistant holds [either] a dental assistant radiology certificate [of registration] issued by the State Board of Dental Examiners under this section[; or was issued a certification under former Section 115.10 (now recodified as Section 114.10) prior to September 1, 2004. This section shall expire in its entirety on September 1, 2006].

(b) To be eligible for a dental assistant radiology certificate [of registration as a dental assistant] under this section, an applicant must present on or accompanying an application form approved by the State Board of Dental Examiners proof satisfactory to the Board that the applicant has:

(1) - (2) (No change.)

(3) Either:

(A) taken and passed a course of instruction and an examination administered by the State Board of Dental Examiners or its designated agent, that fulfills the requirements in subsection (h) of this section; or, [eovers:]

{(i) procedures for positioning and exposing dental x-rays;}

{(ii) jurisprudence; and,}

{(iii) infection control; or,}

(B) (No change.)

(c) (No change.)

(d) Subsequent to the initial registration period, a registered dental assistant's annual renewal will occur on the first day of the month that follows the last month of the dental assistant initial registration period.

(1) (No change.)

(2) A dental assistant registered under this section who wishes to renew his or her registration must:

(A) - (B) (No change.)

(C) For certificates that expire before September 1, 2009, complete [Provide proof of completion of] at least six (6) hours of continuing education in the previous registration year.

(i) (No change.)

(ii) The continuing education requirement may be met through self-study, interactive computer courses, or lecture courses as offered or endorsed by continuing education providers listed in §104.2 of this title; or

(D) For certificates that expire on or after September 1, 2009, complete continuing education as required by §114.12 of this chapter.

(3) (No change.)

(e) - (g) (No change.)

(h) Radiology. Courses administered to fulfill the requirements of a Dental Assistant Radiology Certificate must cover the following course objectives identified by the Dental Assistant Advisory Committee:

(1) At the end of this course of instruction, the student should be able to:

(A) Apply principles of radiation safety in the operation of radiographic equipment.

(i) Explain factors affecting x-ray production.

(ii) Explain x-ray machine factors that influence radiation safety.

(iii) Identify differences between primary radiation and scattered (secondary) radiation.

(iv) Describe protocol in suspected x-ray machine malfunctions.

(B) Practice safety measures for patient protection.

(i) Explain major cause of unnecessary radiation exposure.

(ii) Identify short and long-term effects of radiation on cells and tissues.

(iii) Identify ways to reduce radiation exposure to patients.

(iv) Explain guidelines to determine frequency of radiation exposure.

(C) Practice safety measures for operator protection.

(i) Explain basic radiation physics and biology related to operator exposure.

(ii) Explain sources of radiation to operators while exposing radiographs.

(iii) Identify safety measures to reduce operator radiation exposure.

(D) Identify and select infection control techniques and barriers to minimize cross-contamination according to ADA/CDC guidelines.

(E) Utilize patient management techniques before, during, and after radiographic exposure.

(i) Address patient concerns regarding radiation exposure.

(ii) Select appropriate patient management techniques for radiographic exposure.

(F) Select appropriate intraoral radiographic technique.

(i) Identify appropriate armamentarium for radiographic techniques.

(ii) Select appropriate film size and film speed.

(iii) Expose radiographs.

(G) Practice infection control procedures for radiographic processing.

(H) Prepare, maintain, and replenish radiographic solutions for manual and automatic processors.

(I) Process exposed intra- and extraoral radiographs manually and with automatic processors.

(i) Identify optimum conditions and procedures for processing radiographs.

(ii) Identify and correct errors related to radiographic processing and improper film handling.

(J) Store film and chemical agents used in radiographic procedures according to regulatory guidelines.

(K) Dispose of all chemical agents and other materials used in dental radiographic procedures.

(L) Mount radiographs using facial view.

(i) Identify anatomical landmarks to aid in correct mounting.

(ii) Match specific tooth views to specified tooth mount windows.

(iii) Utilize optimum viewing techniques.

(iv) Label the radiographic mount appropriately.

(M) Identify anatomical structures, dental materials and patient characteristics observed on radiographs.

(N) Evaluate radiographs for diagnostic value.

(i) Identify diagnostically acceptable radiographs.

(ii) Identify and correct causes of errors on intraoral radiographs.

(O) Understand basic principles of extraoral radiology.

(P) Select the appropriate film and equipment.

(Q) Prepare patient for exposure.

(R) Expose extraoral radiographs.

(S) Identify and correct causes of errors on extraoral radiographs.

(T) Explain the concept of digital radiography.

(U) Select appropriate equipment.

(V) Expose digital radiographs.

(W) Identify and correct causes of errors on digital radiographs.

(X) Utilize quality assurance procedures in the dental office for radiographic procedures.

(Y) Prepare radiographs to comply with legal requirements for viewing and duplication.

(i) Explain methods for duplicating radiographs.

(ii) Explain reasons for exposing and retaining radiographs.

(Z) Comply with HIPAA/Patient Privacy Rules and Regulations.

(2) Infection control. At the end of this course of instruction, the student should be able to:

(A) Follow standards and guidelines of occupational safety for dental office personnel.

(i) Utilize regulations in the OSHA/CDC Blood-borne Pathogens Standard.

(ii) Utilize regulations in the OSHA/CDC Hazard Communication Standard.

(B) Identify infectious diseases in the dental setting and available immunizations.

(C) Prevent cross-contamination and disease transmission in the dental setting.

(i) Perform proper hand washing.

(ii) Use disposable items whenever possible.

(iii) Utilize barrier techniques and personal protective equipment (PPE).

(D) Perform disinfection procedures.

(i) Select appropriate PPE.

(ii) Select, prepare and use chemical agents following manufacturer's directions.

(iii) Prepare surfaces for disinfection.

(iv) Disinfect the treatment room, darkroom, instrument processing area, and all associated equipment.

(E) Perform sterilization procedures.

(i) Select appropriate PPE.

(ii) Prepare dental instruments and equipment for sterilization.

(iii) Apply appropriate method for sterilization of dental instruments, equipment and supplies.

(iv) Label and store all instruments properly.

(v) Monitor effectiveness of sterilization process for dental instruments, equipment and supplies.

(F) Maintain infection control of dental unit and equipment.

(G) Practice safety measures when handling all hazardous materials.

(i) Identify and dispose of biohazardous waste.

(ii) Identify and dispose of non-regulated waste.

(iii) Identify and manage potential chemical and physical hazards in accordance with MSDS sheets.

(H) Practice infection control in handling and transporting dental items.

(i) Select appropriate PPE.

(ii) Identify conditions for potential cross-contamination.

(iii) Select and apply appropriate disinfectant.

(iv) Label biohazardous material.

(I) Utilize and maintain a quality assurance program for infection control throughout the dental setting.

(3) Jurisprudence. At the end of this course of instruction, the student should be able to:

(A) State the mission, philosophy and composition of the State Board of Dental Examiners.

(B) Differentiate between the Texas Occupations Code and the rules of the State Board of Dental Examiners.

(C) Comply with Texas law and the rules of the State Board of Dental Examiners as they relate to dental assistant duties.

(i) This subsection as well as subsections (j) and (k) of this section apply to certificates issued on or after September 1, 2009. A dental assistant who holds a certificate of registration issued under this chapter shall display the person's current certificate of registration in each office in which the person makes dental x-rays. If the person

makes dental x-rays at more than one location, the person may display a duplicate of the original registration certificate obtained from the Board on payment of a duplicate certificate fee set by the Board.

(j) A dental assistant who holds a certificate of registration issued under this chapter shall timely notify the Board of:

(1) any change of address of the registrant's place of business;

(2) any change of the registrant's employer; and

(3) any change of the registrant's mailing address.

(k) An initial certificate of registration issued under this section expires on the 30th day after the date the certificate is issued if the holder of the certificate fails to pay the required certificate fee on or before that date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904127

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §114.3

The Texas State Board of Dental Examiners (Board) proposes an amendment to §114.3, concerning pit and fissure sealant certification. The amendment is proposed to enact certain requirements imposed by Senate Bill 455, 81st Legislature, Regular Session, September 1, 2009, which changes the requirements for dental assistants who apply for pit and fissure sealant certification after September 1, 2009 and makes changes to the continuing education requirements for dental assistants. In accordance with the requirements of Senate Bill 445, the previous Pit and Fissure Sealant requirements contained in this section remain in effect for registrants who applied for certification before September 1, 2009. In addition, the title of this section has been changed for the purposes of clarification and to indicate that the requirements of this section specifically apply to the Pit and Fissure Sealant Certificate.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period the section is in effect, there will be limited fiscal implications for local or state government as a result of enforcing or administering the section.

There is an anticipated economic cost to persons who are required to comply with the section as proposed, arising from the cost of required courses and examinations, and incidental costs. There is no anticipated local employment impact as a result of enforcing the sections as proposed.

Ms. Meek has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcement will be the improvement in the education, capabilities, and regulation of dental assistants who perform pit and fissure sealant procedures on patients in the state of Texas. In addition, by allowing dental assistants who have been properly

trained and certified to perform Pit and Fissure Sealants, dentists and dental hygienists will be free to focus their attention on more complex procedures. This will improve access to healthcare for dental patients in the state.

The fiscal implications for small or large businesses will be minimal or none at all. Therefore, the Board has determined that compliance with the proposed section will not have an adverse economic impact on small businesses when compared to large businesses. The requirements of this section will impact individuals who make application for registration, and would only impact small businesses who choose to pay course registration and examination fees for their dental assistant employees.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§114.3. ~~[Application of]~~ Pit and Fissure Sealants Certificate.

(a) (No change.)

(b) This subsection applies only to applications for certification received by the Board before September 1, 2009. A Texas-licensed dentist who is enrolled as a Medicaid Provider with appropriate state agencies, or who practices in an area determined to be underserved by the Department of State Health Services [Texas Department of Health], may delegate the application of a pit and fissure sealant to a dental assistant, if the dental assistant:

(1) is employed by and works under the direct supervision of the licensed dentist; and

(2) is certified pursuant to subsection (f) ~~[(e)]~~ of this section.

(c) This subsection applies only to applications for certification received by the Board on or after September 1, 2009. A Texas-licensed dentist may delegate the application of pit and fissure sealant to a dental assistant, if the dental assistant is certified pursuant to subsection (f) of this section.

(d) [(e)] In addition to application of pit and fissure sealants a dental assistant certified in this section may use a rubber prophylaxis cup and appropriate polishing materials to cleanse the occlusal and smooth surfaces of teeth that will be sealed or to prepare teeth for application of orthodontic bonding resins. Cleansing is intended only to prepare the teeth for the application of sealants or bonding resins and should not exceed the amount needed to do so.

(e) [(d)] The dentist may not bill for a cleansing provided hereunder as a prophylaxis.

(f) [(e)] A dental assistant wishing to obtain certification under this section must:

(1) Pay an application fee set by board rule;

(2) And on a form prescribed by the Board ~~[board]~~ provide proof that the applicant has:

(A) At least two years of experience as a dental assistant;

(B) Successfully completed a current course in basic life support; and

(C) Complete a minimum of 16 hours of education for certificates issued under applications received by the Board before September 1, 2009 or complete a minimum of 8 hours of education for certificates issued under applications received by the Board on or after September 1, 2009. [Completed a minimum of 16 hours of] To fulfill this requirement, the education must include clinical and didactic education in pit and fissure sealants taken through a CODA-accredited dental hygiene or dental assisting program approved by the Board [Board] whose course of instruction includes:

- (i) infection control;
- (ii) cardiopulmonary resuscitation;
- (iii) treatment of medical emergencies;
- (iv) microbiology;
- (v) chemistry;
- (vi) dental anatomy;
- (vii) ethics related to pit and fissure sealants;
- (viii) jurisprudence related to pit and fissure sealants; and

(ix) the correct application of sealants, including the actual clinical application of sealants. [; and]

(g) [(f)] Before January 1 of each year, a dental assistant registered under this section who wishes to renew that registration must:

(1) Pay a renewal fee set by board rule; and

(2) Submit proof that the applicant has successfully completed a current course in basic life support; and [-] either

(3) For certificates issued under applications filed before September 1, 2009, the dental assistant must [Provide proof of completion of] complete at least six (6) hours of continuing education in technical and scientific coursework in the previous calendar year.

(A) The terms "technical" and "scientific", as applied to continuing education, shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Dental assistants shall select and participate in continuing education courses offered by or endorsed by:

(i) dental schools, dental hygiene schools, or dental assisting schools that have been accredited by the Commission on Dental Accreditation of the American Dental Association; or

(ii) nationally recognized dental, dental hygiene or dental assisting organizations.

(C) No more than three (3) hours of the required continuing education coursework may be in self-study; or [-]

(4) For certificates issued under applications filed on or after September 1, 2009, the dental assistant must complete continuing education requirements in accordance with §114.12 of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904128

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972

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22 TAC §114.5

The Texas State Board of Dental Examiners (Board) proposes new §114.5, concerning coronal polishing certificate. The section is proposed to enact certain requirements imposed by Senate Bill 455, 81st Legislature, Regular Session, effective September 1, 2009, which defines coronal polishing and creates a certification process for dental assistants to provide coronal polishing.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period the section is in effect, there will be limited fiscal implications for local or state government as a result of enforcing or administering the section.

There is an anticipated economic cost to persons who are required to comply with the section as proposed, arising from the cost of required courses and examinations, and incidental costs. There is no anticipated local employment impact as a result of enforcing the sections as proposed.

Ms. Meek has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcement will be the improvement in the education, capabilities, and regulation of dental assistants who perform coronal polishing procedures on patients in the state of Texas. In addition, by allowing dental assistants who have been properly trained and certified to perform coronal polishing, dentists and dental hygienists will be free to focus their attention on more complex procedures. This will improve access to healthcare for dental patients in the state.

The fiscal implications for small and micro-businesses will be minimal or none at all. Therefore, the Board has determined that compliance with the proposed section will not have an adverse economic impact on small or micro-businesses when compared to large businesses. The requirements of this section will impact individuals who make application for registration, and would only impact small or micro-businesses who choose to pay course registration and examination fees for their dental assistant employees.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The section is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed new section affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§114.5. Coronal Polishing Certificate.

(a) The following term, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise: "Coronal polishing" means the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces using an appropriate rotary instrument with rubber cup or brush and polishing agent. This includes the use of a toothbrush.

(b) A Texas-licensed dentist may delegate coronal polishing to a dental assistant if the dental assistant:

(1) works under the direct supervision of the licensed dentist; and

(2) is certified pursuant to subsection (d) of this section.

(c) The delegated duty of polishing by a dental assistant may not be billed as a prophylaxis.

(d) A dental assistant seeking certification under this section must:

(1) pay an application fee set by board rule; and

(2) on a form prescribed by the Board, provide proof that the applicant has:

(A) at least two years experience as a dental assistant; and either

(B) completed a minimum of eight (8) hours of clinical and didactic education in coronal polishing taken through a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board that includes courses on:

(i) oral anatomy and tooth morphology relating to retention of plaque and stain;

(ii) indications, contraindications, and complications of coronal polishing;

(iii) principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;

(iv) infection control procedures;

(v) polishing coronal surfaces of teeth; and

(vi) jurisprudence relating to coronal polishing; or

(C) present proof to the Board that the assistant has either:

(i) graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board that includes specific didactic course work and clinical training in coronal polishing; or

(ii) received certification of completion of requirements specified by the Dental Assisting National Board and approved by the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904129

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §114.12

The Texas State Board of Dental Examiners (Board) proposes new §114.12, concerning continuing education for certificate holders. The new section is proposed to enact certain requirements imposed by Senate Bill 455, 81st Legislature, Regular Session, effective September 1, 2009, which establishes continuing education requirements for dental assistant certificates issued under applications filed after September 1, 2009.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefits anticipated as a result of enforcing or administering this section will be (1) the implementation of changes to the Dental Practice Act as a result of the passage of Senate Bill 455 and (2) the consolidation and clarification of continuing education requirements for individuals holding one or more dental assistant certificates.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The section is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed new section affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§114.12. Continuing Education for Certificate Holders.

(a) To renew a certificate issued under this chapter, a dental assistant must complete six (6) hours of continuing education each year in areas covering dental assistant duties.

(b) A dental assistant holding two or more certificates authorized by this chapter is required to complete twelve (12) hours of continuing education each year to renew all of the certificates held by the assistant.

(c) A dental assistant may fulfill the continuing education requirement through board-approved self-study, interactive computer courses, or lecture courses.

(d) Dental assistants shall select and participate in continuing education courses offered by or endorsed by:

(1) dental schools, dental hygiene schools, or dental assisting schools that have been accredited by the Commission on Dental Accreditation of the American Dental Association; or

(2) nationally recognized dental, dental hygiene or dental assisting organizations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904131

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §114.22

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas State Board of Dental Examiners (Board) proposes the repeal of §114.22, concerning dental assistant course objectives.

The repeal is necessary for the purposes of clarity and rule economy as the language of this rule has been absorbed into §114.2.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be clarification in the rules regarding the requirements to obtain a Dental Assistant Radiology Certificate.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The repeal is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed repeal affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Part 5.

§114.22. *Dental Assistant Course Objectives.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904134

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE 22 TAC §115.3

The Texas State Board of Dental Examiners (Board) proposes an amendment to §115.3, concerning institutional employment. The amendment updates a cross-reference to §115.5.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be the deletion of outdated references and language in the section and the subsequent clarification of the agency's rules.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§115.3. *Institutional Employment.*

(a) (No change.)

(b) A licensed hygienist may perform duties in certain custodial care facilities as provided in §115.5 of this chapter. [as permitted by board rule in a long-term health care facility licensed by the State of Texas: All duties performed by the licensed hygienist must be on patients of record under the supervision and responsibility of a dentist, except as provided by §115.5 of this chapter (relating to Dental Hygienists Practicing in Long-Term Care Facilities and School-Based Health Centers).]

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904135

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §115.5

The Texas State Board of Dental Examiners (Board) proposes an amendment to §115.5, concerning dental hygienists practicing in certain facilities. The amendment is proposed to enact certain requirements imposed by Senate Bill 97, 81st Legislature, Regular Session, effective September 1, 2009, which adds community health centers to the list of facilities where a dental hygienist may perform work on a patient without a dentist having seen the patient in the previous twelve months and makes changes to the circumstances under which the dental hygienist may perform those tasks.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be the implementation of changes to the Dental Practice Act as a result of the passage of Senate Bill 97. The amendments will increase access to healthcare in the state particularly for children, individuals in nursing homes, and economically disadvantaged individuals, while insuring proper documentation and oversight by a dentist.

There may be economic costs to small or micro-businesses as a result of this proposed amendment. Many dental practices in the state are small or micro-businesses as defined by §2006.001, Texas Government Code. However, it is likely that many of the dental patients who will receive care under the provisions of this section would not seek dental healthcare outside of the institutional settings provided for here. In addition, this amendment requires a dental hygienist to work under a supervising dentist and limits the amount of time the care can be provided before the patient must see a dentist for an exam. Further, under §2006.001, Texas Government Code, an agency is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety, and environmental and economic welfare of the state. The Board has developed this proposed amendment in accordance with legislative changes to the Dental Practice Act. Consequently, any variance from the mandated changes would not be consistent with the health, safety, or environmental and economic welfare of the state, and no alternative regulatory methods need to be considered by the agency.

There is a negligible cost to persons as a result of enforcing or administering this section in the form of minimal time and expense expended by the licensee to contact the Board regarding the changes.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§115.5. Dental Hygienists Practicing in Certain [Long Term Care] Facilities [and School-Based Health Centers].

(a) A dentist may delegate to a Texas licensed dental hygienist authorization to perform a service, task or procedure for patients whom the dentist has not seen within the past twelve months when conditions are met as follows:

(1) - (2) (No change.)

(3) The service, task or procedure must be performed in either:

(A) a nursing facility as defined in the Health and Safety Code, §242.301; [or]

(B) a school-based health center established under Subchapter B, Chapter 38, Texas Education Code; or [as defined by the Education Code, §38.011, as amended by Chapter 1418, Acts of the 76th Legislature, Regular Session.]

(C) a community health center as defined by §136.002, Human Resources Code.

(b) (No change.)

(c) A dental hygienist, after having performed the services, tasks or procedures under this rule, may only perform delegated [not provide a second set of] services, tasks or procedures with respect to [for] the patient for six months unless [until] the patient has been seen by either the dentist who delegated to the hygienist the authority or by a dentist to whom the patient was referred.

(d) The [nursing] facility defined in subsection (a) of this section [or school-based health center] must agree to include information provided pursuant to subsection (b) of this section in the patient's medical records.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904136

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §115.7

The Texas State Board of Dental Examiners (Board) proposes new §115.7, concerning notification of change of information. The new section is proposed to enact certain requirements imposed by Senate Bill 887, 81st Legislature, Regular Session, effective September 1, 2009 which requires dental hygienists to notify the Board of changes in place of business, employer, or mailing address within sixty (60) days of such change. The proposed new section also incorporates requirements from previously enacted legislation requiring hygienists to notify the Board within sixty (60) days of any changes in the hygienist's place of business or employer. While these requirements have applied to hygienists by law, this proposed new section identifies the requirements by rule as well.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be: (1) the implementation of changes to the Dental Practice Act as a result of Senate Bill 887; (2) that up-to-date contact information will be provided to the Board by its licensees in a timely manner; and (3) that this requirement can be clearly identified by licensees in the rules.

There is no anticipated impact on large, small or micro-businesses.

There is a negligible cost to persons as a result of enforcing or administering this section in the form of minimal time and expense expended by the licensee to contact the Board regarding the changes.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The section is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed section affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§115.7. Notification of Change of Information.

Each dental hygienist licensed with the board shall notify the Board within sixty (60) days of any:

- (1) change of address of the licensee's place of business;
- (2) change of the licensee's employer; or
- (3) change in the licensee's mailing address.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904137

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0972



22 TAC §115.20

The Texas State Board of Dental Examiners (Board) proposes an amendment to §115.20, concerning dental hygiene advisory committee--purpose and composition. The amendment is proposed to enact certain requirements imposed by Senate Bill 887, 81st Legislature, Regular Session, effective September 1, 2009, which increases the length of time a member may service on the Dental Hygiene Advisory Committee.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be the implementation of changes to the Dental Practice Act as a result of the passage of Senate Bill 887.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§115.20. Dental Hygiene Advisory Committee--Purpose and Composition.

(a) (No change.)

(b) Members of the advisory committee serve staggered six-year terms. A member may not serve more than two consecutive full terms. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection. [A member may serve only one six year term.]

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904142

Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: November 1, 2009
For further information, please call: (512) 475-0972

CHAPTER 116. DENTAL LABORATORIES

22 TAC §116.3

The Texas State Board of Dental Examiners (Board) proposes an amendment to §116.3, concerning registration and renewal. The amendment is proposed to enact certain requirements imposed by Senate Bill 887, 81st Legislature, Regular Session, effective September 1, 2009, which requires an owner or manager of a dental laboratory to notify the Board of any change of mailing address. The amendment also deletes text requiring the Dental Laboratory Certification Council to provide the Board a list of applicants and allows dental laboratory certificate holders 30 days to pay registration fees after initial registration.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this section will be: (1) the implementation of changes to the Dental Practice Act as a result of Senate Bill 887; (2) that up-to-date contact information will be provided to the Board by its licensees in a timely manner; (3) that this requirement can be clearly identified by licensees in the agency's rules; and (4) timely payment of fees by licensees.

There is a negligible anticipated economic impact on small business, micro-business, and individuals as a result of enforcing or administering this section in the form of minimal time and expense expended by the licensee to contact the Board regarding the changes.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; and the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Part 5.

§116.3. *Registration and Renewal.*

(a) (No change.)

(b) The Dental Laboratory Certification Council (DLCC) shall review each application for registration or renewal of registration to determine if the applicant meets the requirements of Occupations Code, Chapter 266. ~~[The DLCC shall provide the Board with a list of applicants who are eligible for registration with the Board.]~~ Applications will be forwarded with a recommendation to the Board for registration if the requirements of Occupations Code, Chapter 266 and this chapter are met, and the following materials are submitted:

(1) - (4) (No change.)

(c) It shall be the duty of each laboratory owner or manager to notify the Board in writing within 60 days of:

(1) a change in ownership or management of the laboratory;

(2) - (3) (No change.)

(4) a change of designated CDT, in which case the notice must be accompanied by proof of current CDT certification for the replacement CDT; ~~[or:]~~

(5) a change of designated employee, if the laboratory is exempted under §116.5 of this chapter. A change of designated employee will require proof within six (6) months of the change that the designated employee meets continuing education requirements; or [-]

(6) a change in mailing address for the owner or manager of the laboratory.

(d) (No change.)

(e) An initial registration certificate issued under this chapter on or after September 1, 2009 expires on the 30th day after the date the registration certificate is issued if the holder of the registration certificate fails to pay the required registration certificate fee on or before that date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904143
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: November 1, 2009
For further information, please call: (512) 475-0972

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §§163.1, 163.2, 163.4 - 163.7, 163.11

The Texas Medical Board (Board) proposes amendments to §§163.1, 163.2, 163.4 - 163.7 and 163.11, concerning Licensure.

The amendment to §163.1, relating to Definitions, deletes definition of "country of graduation" because the provision is no longer needed.

The amendment to §163.2, relating to Full Texas Medical License, is based on House Bill 3674 passed by the 81st Legislature to allow applicants for licensure to demonstrate board certification to satisfy requirements relating to substantial equivalence of medical education and permits applicants who are foreign graduates to apply one year of their postgraduate training obtained outside the U.S. or Canada for licensure requirements, if the training is approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists. A change also includes deletion of language relating to sitting for monitored examinations and instead requires board certification in relation to

fifth pathway applicants to be consistent with other provisions of the chapter.

The amendment to §163.4, relating to Procedural Rules for Licensure Applicants, removes reference to the current three-attempt limit on the jurisprudence examination.

The amendment to §163.5, relating to Licensure Documentation, deletes the requirement of presentation of a certificate of registration in relation to foreign medical school graduates since the Board obtains other documentation from applicants to demonstrate graduation from medical school.

The amendment to §163.6, relating to Examinations Accepted for Licensure, allows for more than three attempts on the jurisprudence examination if the applicant demonstrates good cause.

The amendment to §163.7, relating to the Ten-Year Rule, requires applicants for licensure who have not passed and taken an acceptable licensure examination in the ten years prior to the date of application to demonstrate board certification, rather than just passage of a monitored examination.

The amendment to §163.11, relating to Active Practice of Medicine, clarifies that if an applicant for licensure is unable to demonstrate that the applicant has actively practiced medicine prior to the date of application, the applicant can present proof of board certification obtained within two years of date of application.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing §163.1, will be to eliminate requirements for licensure that do not provide any benefit; as a result of enforcing §163.2, will be to create rules consistent with recent statutory amendments that permit licensure applicants to provide proof that the applicant has successfully completed at least two years of board-approved graduate medical training in the United States or Canada and at least one year of graduate medical training outside the United States or Canada that was approved for advanced standing by a board-approved specialty board organization, rather than demonstrating completion of three years of training in the U.S. or Canada; as a result of enforcing §163.4, will be to give applicants additional attempts to pass the Board's jurisprudence examination upon a showing of good cause; as a result of enforcing §163.5, will be to provide more clarity to the Board's rules and to comply with recent amendments to §155.104 of the Texas Occupations Code; as a result of enforcing §163.6, will be to give applicants additional attempts to pass the Board's jurisprudence examination upon a showing of good cause; as a result of enforcing §163.7, will be to raise the standards for licensure applicants who have not taken an acceptable licensure examination in the ten years prior to the date of application; as a result of enforcing §163.11, will be to provide more clarity to the Board's rules and to comply with recent amendments to §155.104 of the Texas Occupations Code.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments

to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.003 and §155.104, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§163.1. Definitions.

The following words and terms, (concerning General Definitions) when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acceptable approved medical school--A medical school or college located in the United States or Canada that has been accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education.

(2) Acceptable unapproved medical school--A school or college located outside the United States or Canada that:

(A) is substantially equivalent to a Texas medical school; and

(B) has not been disapproved by a state physician licensing or education agency.

(i) If another state's physician licensing agency or education agency has determined that a medical degree conferred by a medical school is not the equivalent of an accredited or authorized degree or has otherwise disapproved the medical school, the board will not recognize the medical school as an acceptable unapproved medical school, unless:

(I) the Texas Higher Education Coordinating Board has determined that a degree conferred by the medical school is the equivalent of an accredited or authorized degree through the review process described by §61.3021, Texas Education Code; or

(II) the applicant can provide evidence that the determination or disapproval by the other state was unfounded.

(ii) A fraudulent or substandard medical school operating outside the United States or Canada shall not be an acceptable unapproved medical school. "Fraudulent or substandard," as used in this subsection, has the meaning assigned by §61.302, Texas Education Code. If the Texas Higher Education Coordinating Board certifies that it has determined, through the review process described by §61.3021, Texas Education Code, that a medical degree conferred by a medical school is not the equivalent of an accredited or authorized degree, the board will not recognize the medical school as an acceptable unapproved medical school.

(iii) This section [subsection] shall not affect any person who received a license from the board prior to a determination by the Texas Higher Education Coordinating Board through the review process described by §31.3021, Texas Education Code.

(3) Affiliated hospital--Affiliation status of a hospital with a medical school as defined by the Liaison Committee on Medical Education and documented by the medical school in its application for accreditation.

(4) Applicant--One who files an application as defined in this section.

(5) Application--An application is all documents and information necessary to complete an applicant's request for licensure including the following:

(A) forms furnished by the board, completed by the applicant:

(i) all forms and addenda requiring a written response must be typed, printed in ink, or completed online;

(ii) photographs must meet United States Government passport standards;

(B) all documents required under §163.5 of this title (relating to Licensure Documentation); and

(C) the required fee.

(6) Board--Texas Medical Board.

(7) Continuous--12 month periods of uninterrupted postgraduate training with no absences greater than 21 days, unless such absences have been approved by the training program.

~~[(8) Eligible for licensure in country of graduation--An applicant must be eligible for licensure in the country in which the medical school is located except for any citizenship requirements.]~~

(8) ~~[(9)]~~ Good professional character--An applicant for licensure must not be in violation of or have committed any act described in the Medical Practice Act, TEX. OCC. CODE ANN. §§164.051 - 164.053.

(9) ~~[(10)]~~ One-year training program--A program that is one continuous year of postgraduate training approved by the board that is:

(A) accepted for certification by a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; or

(B) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education, or its predecessor;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada; or

(v) the College of Family Physicians of Canada; or

(C) a postresidency program, usually called a fellowship, performed in the U.S. or Canada and approved by the board for additional training in a medical specialty or subspecialty.

(10) ~~[(11)]~~ Sixty (60) semester hours of college courses--60 semester hours of college courses other than in medical school that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree; the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or substantially equivalent courses as determined by the board.

(11) ~~[(12)]~~ Substantially equivalent to a Texas medical school--A medical school or college shall be considered to be substantially equivalent to a Texas medical school under the following conditions:

(A) An acceptable approved medical school shall be considered to be substantially equivalent to a Texas medical school. A medical school operating within the United States or Canada that is not an acceptable approved medical school shall not be considered to be substantially equivalent to a Texas medical school.

(B) A medical school operating outside the United States or Canada may be determined to be substantially equivalent to a Texas medical school if the medical school is designed to select and educate medical students and provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences. The school should provide information about the school's program of advancement of knowledge through research; the school's development of programs of graduate medical education to produce practitioners, teachers, and researchers; and, the school's program to provide opportunity for postgraduate and continuing medical education, for the board's consideration. In addition, to be determined substantially equivalent to a Texas medical school, the medical school's characteristics shall include, but not be limited to, the following:

(i) The facilities for basic sciences and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(ii) The admissions standards shall ensure that the medical school has a pool of applicants sufficiently large and possessing United States national level qualifications to fill its entering class. Medical schools must select students who possess the intelligence, integrity, and personal and emotional characteristics necessary for them to become effective physicians.

(iii) The curriculum shall meet the requirements for an unapproved medical school as set forth in the "Curriculum Definitions for Course Areas Prescribed by the Texas Higher Education Coordinating Board for Determining Eligibility of International Medical Graduates for Texas Medical Licensure," as adopted by the Texas Higher Education Coordinating Board, as follows:

(I) The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled gross anatomy, biochemistry, biology, physiology, microbiology, immunology, pathology, pharmacology, and neuroscience.

(II) The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, family practice, and surgery.

(iv) The curriculum shall be of at least 130 weeks in duration.

(v) There must be integrated institutional responsibility for the overall design, management and evaluation of a coherent and coordinated curriculum.

(vi) For schools that have geographically separated programs, the principal academic officer of each geographically remote site must coordinate the curriculum with an academic officer of the medical school responsible for organizing the educational program.

(12) ~~[(13)]~~ Texas Medical Jurisprudence Examination (JP exam)--~~[(13)]~~ The ethics examination developed by the board.

(13) ~~[(14)]~~ Three-year training program--Three continuous years of postgraduate training in the United States or Canada, progressive in nature and acceptable for specialty board certification in one specialty area that is:

- (A) accredited by one of the following:
- (i) the Accreditation Council for Graduate Medical Education;
 - (ii) the American Osteopathic Association;
 - (iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;
 - (iv) the Royal College of Physicians and Surgeons of Canada;
 - (v) the College of Family Physicians of Canada; or
 - (vi) all programs approved by the board after August 25, 1984; or

(B) a board-approved program for which a Faculty Temporary Permit was issued; or

(C) a postresidency program, usually called a fellowship, for additional training in a medical specialty or subspecialty, approved by the board.

§163.2. Full Texas Medical License.

(a) Graduates of medical schools in the United States or Canada. To be eligible for full licensure, an applicant who is a graduate from a school in the United States or Canada must:

- (1) be 21 years of age;
- (2) be of good professional character as defined under §163.1(8)(9) of this title (relating to Definitions);
- (3) have completed 60 semester hours of college courses as defined under §163.1(10)(44) of this title;
- (4) be a graduate of an acceptable approved medical school as defined under §163.1(2) of this title;
- (5) have successfully completed a one-year training program of graduate medical training in the United States or Canada as defined under §163.1(9)(40) of this title;
- (6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.6(a) of this title (relating to Examinations Accepted for Licensure); and [;]
- (7) pass the Texas Medical Jurisprudence Examination.

(b) Graduates of medical schools outside the United States or Canada. To be eligible for full licensure, an applicant who is a graduate from a school outside the United States or Canada must:

- (1) be 21 years of age;
- (2) be of good professional character as defined under §163.1(8)(9) of this title;
- (3) have completed 60 semester hours of college courses as defined under §163.1(10)(44) of this title;
- (4) be a graduate of:

(A) an acceptable unapproved medical school as defined under §163.1(2) of this title; or

(B) any medical school and hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists. [a medical school that meets the board's requirements for substantial equivalence to a texas medical school and:]

~~[(i) have passed the basic sciences portion of an acceptable examination listed in §163.6(a) of this title within two attempts;]~~

~~[(ii) have not been the subject of disciplinary action by any other state, the uniformed services of the United States, or the applicant's peers in a local, regional, state, or national professional medical association or staff of a hospital;]~~

~~[(iii) have, on a full-time basis, actively diagnosed or treated patients or have been on the active teaching faculty of an acceptable approved medical school for three of the last four years preceding receipt of an Application for licensure, which may include post-graduate training (The term "full-time basis" shall have the same meaning provided in §163.11(b) of this title); and]~~

~~[(iv) hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists or have passed a monitored examination leading to such certification by the specialty board.]~~

(5) have either:

(A) successfully completed a three-year training program of graduate medical training in the United States or Canada as defined under §163.1(13)(44) of this title; or

(B) successfully completed at least two years of graduate medical training in the United States or Canada that was approved by the board and at least one year of graduate medical training outside the United States or Canada that was approved for advanced standing by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;

(6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.6 of this title;

(7) pass the Texas Medical Jurisprudence Examination;

~~[(8) be eligible for licensure in country of graduation as defined under §163.1(8) of this title;]~~

(8) ~~[(9)]~~ possess a valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);

(9) ~~[(40)]~~ have the ability to communicate in the English language; and

(10) ~~[(44)]~~ have supplied all additional information that the board may require concerning the applicant's medical school.

(c) Fifth Pathway Program. To be eligible for licensure, an applicant who has completed a Fifth Pathway Program must:

(1) be at least 21 years of age;

(2) be of good professional character as defined under §163.1(8)(9) of this title;

(3) have completed 60 semester hours of college courses as defined under §163.1(10)(42) of this title;

(4) have completed all of the didactic work, but not graduated from a foreign medical school and meet the requirements subparagraph (A) or (B) of this paragraph [subsection].

(A) The medical school's curriculum meets the requirements for an acceptable unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board; or

(B) Either:

(i) the medical school's curriculum is substantially equivalent to a Texas medical school as defined under §163.1(11)(43) of this title and has not been disapproved by another state physician licensing agency unless the applicant can provide evidence that the disapproval was unfounded, or:

(ii) the applicant must:

(I) have passed the basic sciences portion of an acceptable examination listed in §163.6(a) of this title within two attempts;

(II) have not been the subject of disciplinary action by any other state, the uniformed services of the United States, or the applicant's peers in a local, regional, state, or national professional medical association or staff of a hospital;

(III) have, on a full-time basis, actively diagnosed or treated persons or have been on the active teaching faculty of an acceptable approved medical school for three of the last four years preceding receipt of an Application for licensure, which may include post-graduate training (The term "full-time basis" shall have the same meaning provided in §163.11(b) of this title (relating to Active Practice of Medicine)); and

(IV) hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists [or have passed a monitored examination leading to such certification by the specialty board].

(5) have successfully completed a three-year training program of graduate medical education in the United States or Canada that was approved by the board on the date the training was completed;

(6) submit evidence of passing an examination, that is acceptable to the board for licensure;

(7) pass the Texas Medical Jurisprudence Examination;

(8) submit a sworn affidavit that no proceedings, past or current, have been instituted against the applicant before any state medical board, provincial medical board, in any military jurisdiction or federal facility;

(9) have attained a passing score on the ECFMG examination;

(10) have the ability to communicate in the English language;

(11) have attained a satisfactory score on a qualifying examination and have completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program) in a United States medical school; and

(12) have supplied all additional information that the board may require, concerning the applicant's medical school, before approving the applicant.

§163.4. *Procedural Rules for Licensure Applicants.*

(a) All applicants for licensure:

(1) if appropriate, are encouraged to use the Federation Credentials Verification Service (FCVS) offered by the Federation of State Medical Boards of the United States (FSMB) to verify medical education, postgraduate training, licensure examination history, board action history and identity;

(2) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided

by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for licensure will require submission of a new application and inclusion of the current licensure fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events.

(3) who in any way submit a false or misleading statement, document, or certificate in an application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a Texas license;

(4) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a Texas license;

(5) shall be required to comply with the board's rules and regulations which are in effect at the time the application form and fee are filed with the board;

(6) may be required to sit for additional oral, written, mental or physical examinations that, in the opinion of the board, are necessary to determine competency and ability of the applicant;

(7) must have the application for licensure complete in every detail 20 days prior to the board meeting in which they are considered for licensure. Applicants with complete applications may qualify for a Temporary License prior to being considered by the board for licensure, as required by §172.11 of this title (relating to Temporary Licensure--Regular); and

(8) that receive any medical or osteopathic medical education in the United States must have obtained such education while enrolled as a full-time or visiting student at a medical school that is accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States. This subsection does not apply to postgraduate medical education or training. An applicant who is unable to comply with this requirement must demonstrate that the applicant either:

(A) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the board in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or

(B) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties.

(b) Applicants for a license must subscribe to an oath in writing. The written oath is part of the application.

(c) An applicant is not eligible for a license if:

(1) the applicant holds a medical license that is currently restricted for cause, canceled for cause, suspended for cause, or revoked by a state of the United States, a province of Canada, or a uniformed service of the United States;

(2) an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation of the applicant's medical license in a state of the United States, a province of Canada, or a uniformed service of the United States; or

(3) a prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude.

(d) If the Executive Director determines that the applicant clearly meets all licensing requirements, the Executive Director or a person designated by the Executive Director, may issue a license to the applicant, to be effective on the date issued without formal board approval, as authorized by §155.002(b) of the Act.

(e) If the Executive Director determines that the applicant does not clearly meet all licensing requirements, a license may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §155.007 of the Act (relating to Application Process) and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility).

(f) If the Executive Director determines that the applicant is ineligible for licensure based on one or more of the statutory or regulatory provisions listed in paragraphs (1) - (5) of this subsection, the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued. Grounds for ineligibility under this subsection include noncompliance with the following:

(1) Section 155.003(a)(1) of the Act that requires the applicant to be 21 years of age;

(2) Section 155.003(b) and (c) of the Act that require that medical or osteopathic medical education received by an applicant must be accredited by an accrediting body officially recognized by the United States Department of Education, or meet certain other requirements, as more fully set forth in §§163.4(a)(8), 163.5(b)(11), 163.5(c)(2)(C), 163.5(c)(2)(D), and 163.1(11)(B)(iii) and (iv) of this chapter;

(3) Sections 155.051 - 155.0511, and 155.056 of the Act that relates to required licensure examinations and examination attempts;

(4) Section 163.7 of this chapter (relating to the Ten Year Rule); and

(5) Section 163.6(e) of this chapter (relating to Examinations Accepted for Licensure) that requires passage of the Jurisprudence Examination [within three attempts].

§163.5. Licensure Documentation.

(a) On request of board staff, an applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspection. Original documents may

include, but are not limited to, those listed in subsections (b) - (e) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a valid passport or birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where such documentation is not available, the applicant must provide copies of other suitable alternate documentation.

(2) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination Scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for licensure.

(4) Dean's Certification. Each applicant for licensure must have a certificate of graduation submitted directly from the medical school on a form provided to the applicant by the board. The applicant shall attach a recent photograph, meeting United States Government passport standards, to the form before submitting to the medical school. The school shall have the Dean of the medical school or designated appointee sign the form attesting to the information on the form and placing the school seal over the photograph.

(5) Evaluations. All applicants must provide evaluations completed by an appropriate supervisor, on a form provided by the board, of their professional affiliations for the past five years or since graduation from medical school, whichever is the shorter period.

(6) Medical School Transcript. On request of board staff, an applicant must have his or her medical school submit a transcript of courses taken and grades obtained.

(7) National Practitioner Data Bank/Health Integrity and Protection Data Bank (NPDB-HIPDB). Each applicant must contact the NPDB-HIPDB and have a report of action submitted directly to the board on the applicant's behalf.

(8) Graduate Training Verification. On request of board staff, an applicant must have any of the training programs in which they have participated in submit verification on a form provided by the board. The evaluation must show the beginning and ending dates of the program and state that the program was successfully completed.

(9) Specialty Board Certification. Each applicant who has obtained certification by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists must submit a copy of the certificate issued by the member showing board certification.

(10) Medical License Verifications. On request of board staff, an applicant must have any state in which he or she has ever been licensed, regardless of the current status of the license, submit directly to this board a letter verifying the status of the license and a description of any sanctions or pending disciplinary matters.

(11) U.S. medical education. Applicants must demonstrate that any medical school education that was completed in the United States in satisfaction of their core basic and clinical science courses as established by the Texas Higher Education Coordinating Board, the Liaison Council on Medical Education, and/or the American Osteopathic

Association, and in satisfaction of the 130 weeks of required medical education was accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree. An applicant who is unable to comply with these requirements may in the alternative demonstrate that the applicant:

(A) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or approved by the board under § [Section] 171.4 of this title (relating to Board-Approved Postgraduate Fellowship Training Programs) in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or

(B) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties.

(c) Applicants for licensure who are graduates of medical schools outside the United States or Canada must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a) and (b) of this section.

(1) Educational Commission for Foreign Medical Graduates (ECFMG) Status Report. Each applicant must submit an ECFMG status report.

(2) Unique Documentation. The board may request documentation unique to an individual unapproved medical school and additional documentation as needed to verify completion of medical education that is substantially equivalent to a Texas medical school education. This may include but is not limited to:

- (A) a copy of the applicant's ECFMG file;
- (B) a copy of other states' licensing files;
- (C) copies of the applicant's clinical clerkship evaluations; and
- (D) a copy of the applicant's medical school file.

~~[(3) Certificate of Registration. Each applicant must provide a copy of his or her certificate to practice in the country in which his or her medical school is located. If a certificate is unavailable, a letter submitted directly to this board from the body governing licensure of physicians in the country in which the school is located, will be accepted. The letter must state that the applicant has met all the requirements for licensure in the country in which the school is located. If an applicant is not licensed in the country of graduation due to a citizenship requirement, a letter attesting to this, submitted directly to this board, will be required.]~~

(3) [(4)] Clinical Clerkship Affidavit. A form, supplied by the board, to be completed by the applicant, is required listing each clinical clerkship that was completed as part of an applicant's medical education. The form will require the name of the clerkship, where the clerkship was located (name and location of hospital) and dates of the clerkship.

(4) [(5)] "Substantially equivalent" documentation. An applicant who is a graduate of a medical school that is located outside the United States and Canada must present satisfactory proof to the board that each medical school attended was substantially equivalent to a Texas medical school at the time of attendance as defined under §163.1(11)[(42)] of this title. This may include but is not limited to:

(A) a Foreign Educational Credentials Evaluation from the Office of International Education Services of the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or an International Credential Evaluation from the Foreign Credential Service of America (FCSA), or another similar entity as approved by the board;

(B) a board questionnaire, to be completed by the medical school and returned directly to board;

(C) a copy of the medical school's catalog;

(D) verification from the country's educational agency confirming the validity of school and licensure of applicant;

(E) proof of written agreements between the medical school and all hospitals that are not located in the same country as the medical school, where medical education was obtained;

(F) proof that the faculty members of the medical school had written contracts with the school if they taught a course outside the country where the medical school was located;

(G) proof that the medical education courses taught in the United States complied with the higher education laws of the state in which the courses were taught;

(H) proof that the faculty members of the medical school who taught courses in the United States were on the faculty of the program of graduate medical education when the courses were taught; and

(I) proof that all education completed in the United States or Canada was while the applicant was enrolled as a visiting student as evidenced by a letter of verification from the U.S. or Canadian medical school.

(5) [(6)] Medical Diploma. On request of board staff, an applicant must submit a copy of his or her medical diploma, and translation if necessary.

(d) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation will have to be submitted along with the translated document.

(A) An official translation from the medical school (or appropriate agency) attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency that is a member of the American Translations Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use this phrase: "Subscribed and Sworn to this _____ day of _____, 20__." The notary must then sign and date the translation, and affix his/her Notary Seal to the document.

(2) **Arrest Records.** If an applicant has ever been arrested, a copy of the arrest and arrest disposition need to be requested from the arresting authority and said authority must submit copies directly to this board.

(3) **Malpractice.** If an applicant has ever been named in a malpractice claim filed with any medical liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must do the following:

(A) have each medical liability carrier complete a form furnished by the board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter should include supporting court records. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(4) **Inpatient Treatment for Alcohol/Substance Disorder or Physical or Mental Illness.** Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance disorder or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include items listed in subparagraphs (A) - (D) of this paragraph. An inpatient facility shall include a hospital, ambulatory surgical center, nursing home, and rehabilitation facility.

(A) an applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychologist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(5) **Outpatient Treatment for Alcohol/Substance Disorder or Mental Illness.** Each applicant who has been treated on an outpatient basis within the last five years for alcohol/substance disorder or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(A) an applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychologist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(6) **DD214.** A copy of the DD214, indicating separation from any branch of the United States military.

(7) **Premedical School Transcript.** Applicants, upon request, may be required to submit a copy of the record of their undergraduate education. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in medical school or education required for country of graduation, the applicant may be requested to contact the Office of Admissions at The University of Texas at Austin for course work verification.

(8) **Fingerprint Card.** Upon request, applicants must complete a fingerprint card and return to the board as part of the application.

(9) **Additional Documentation.** Additional documentation as is deemed necessary to facilitate the investigation of any application for medical licensure.

(e) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

§163.6. Examinations Accepted for Licensure.

(a) **Licensing Examinations Accepted by the Board for Licensure.** The following examinations are acceptable for licensure:

(1) United States Medical Licensing Examination (USMLE), or its successor, with a score of 75 or better, or a passing grade if applicable, on each step;

(2) COMLEX-USA, or its successor, with a score of 75 or better, or a passing grade if applicable, on each step;

(3) Federation Licensing Examination (FLEX), on or after July 1, 1985, passage of both components with a score of 75 or better on each component;

(4) Federation Licensing Examination (FLEX), before July 1, 1985, with a FLEX weighted average of 75 or better in one sitting;

(5) National Board of Medical Examiners Examination (NBME) or its successor;

(6) National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor;

(7) Medical Council of Canada Examination (LMCC) or its successor;

(8) State board licensing examination, passed before January 1, 1977, (with the exception of Virgin Islands, Guam, Tennessee Osteopathic Board or Puerto Rico then the exams must be passed before July 1, 1963); or

(9) One of the following examination combinations with a score of 75 or better on each part, level, component, or step;

(A) FLEX I plus USMLE 3;

(B) USMLE 1 and USMLE 2 (including passage of the clinical skills component if applicable), plus FLEX II;

(C) NBME I or USMLE 1, plus NBME II or USMLE 2 (including passage of the clinical skills component if applicable), plus NBME III or USMLE 3;

(D) NBME I or USMLE 1, plus NBME II or USMLE 2 (including passage of the clinical skills component if applicable), plus FLEX II;

(E) The NBOME Part I or COMLEX Level I and NBOME Part II or COMLEX Level II and NBOME Part III or COMLEX Level III.

(b) Examination Attempt Limit.

(1) An applicant must pass each part of an examination listed in subsection (a) of this section within three attempts. An applicant who attempts more than one type of examination must pass each part of at least one examination and shall not be allowed to combine parts of different types of examination. Attempts at a comparable part of a different type of examination shall be counted against the three-attempt limit.

(2) Notwithstanding paragraph (1) of this subsection, an applicant who, on September 1, 2005, held a Texas physician-in-training permit issued under §155.105 of the Act or had an application for that permit pending before the board must pass each part of the examination within three attempts, except that, if the applicant has passed all but one part of the examination within three attempts, the applicant may take the remaining part of the examination one additional time. However, an applicant is considered to have satisfied the requirements of this subsection if the applicant:

(A) passed all but one part of the examination approved by the board within three attempts and passed the remaining part of the examination within six attempts;

(B) is specialty board certified by a specialty board that:

(i) is a member of the American Board of Medical Specialties; or

(ii) is approved by the American Osteopathic Association; and

(iii) has completed in this state an additional two years of postgraduate medical training approved by the board.

(3) The limitation on examination attempts by an applicant under paragraph (1) of this subsection does not apply to an applicant who:

(A) is licensed and in good standing as a physician in another state;

(B) has been licensed for at least five years;

(C) does not hold a medical license in the other state that has any restrictions, disciplinary orders, or probation; and

(D) passed all but one part of the examination approved by the board within three attempts and:

(i) passed the remaining part of the examination within one additional attempt; or

(ii) passed the remaining part of the examination within six attempts if the applicant:

(I) is specialty board certified by a specialty board that:

(-a-) is a member of the American Board of Medical Specialties; or

(-b-) is approved by the American Osteopathic Association; and

(II) has completed in this state an additional two years of postgraduate medical training approved by the board.

(c) Limit on Time to Complete Examination.

(1) An applicant must pass all parts of an examination listed in subsections (a)(1), (a)(2), (a)(4), (a)(5), or (a)(6) of this section within seven years; or,

(2) If the applicant is a graduate of a program designed to lead to both a doctor of philosophy degree and a doctor of medicine degree or doctor of osteopathy degree, the applicant may qualify by passing each part of an examination listed in subsections (a)(1), (a)(2), (a)(4), (a)(5), or (a)(6) of this section not later than the second anniversary of the date the applicant completed the required graduate medical training.

(d) The time frame to pass each part of the examination described by subsection (c)(1) of this section is extended to 10 years and the anniversary date to pass each part of the examination described by subsection (c)(2) of this section is extended to the 10th anniversary if the applicant:

(1) is specialty board certified by a specialty board that:

(A) is a member of the American Board of Medical Specialties; or

(B) is a member of the Bureau of Osteopathic Specialists; or

(2) has been issued a faculty temporary license, as prescribed by board rule, and has practiced under such a license for a minimum of 12 months and, at the conclusion of the 12-month period, has been recommended to the board by the chief administrative officer and the president of the institution in which the applicant practiced under the faculty temporary license.

(e) Texas Medical Jurisprudence Examination (JP Exam).

(1) In this chapter, when applicants are required to pass the JP exam, applicants must pass the JP exam with a score of 75 or better within three attempts, unless the Board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the Licensure Committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

(2) An examinee shall not be permitted to bring medical books, compendia, notes, medical journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(3) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(4) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board.

§163.7. Ten Year Rule.

An applicant who has not passed an examination listed in §163.6(a) of this title (relating to Examinations Accepted for Licensure) for licensure within the ten-year period prior to the filing date of the application must:

(1) present evidence of current certification or recertification through the passage of a monitored examination or formal evaluation by a member board of the American Board of Medical Specialties, the Bureau of Osteopathic Specialists, or the American Board of Oral and Maxillofacial Surgery that was obtained within the preceding ten years [~~pass a monitored specialty certification examination or formal evaluation; a monitored recertification examination or formal evaluation; or a monitored examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists within the preceding ten years~~];

(2) obtain through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board, including but not limited to participation for at least six months in a training program approved by the board within twelve months prior to the application for licensure; or

(3) pass the Special Purpose Examination (SPEX) within the preceding ten years. The applicant must score 75 or better within three attempts.

§163.11. Active Practice of Medicine.

(a) All applicants for licensure shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively diagnosed or treated persons or has been on the active teaching faculty of an acceptable approved medical school, within either of the last two years preceding receipt of an Application for licensure.

(b) The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(c) Applicants who do not meet the requirements of subsections (a) and (b) of this section may, in the discretion of the executive director or board, be eligible for an unrestricted license or a restricted license subject to one or more of the following conditions or restrictions:

(1) current certification or recertification by the American Board of Medical Specialties, [or] Bureau of Osteopathic Specialists, or the American Board of Oral and Maxillofacial Surgery obtained by passing a monitored specialty certification or recertification examination or formal evaluation within the two years prior to date of applying for licensure;

(2) limitation of the practice of the applicant to specified activities of medicine and/or exclusion of specified activities of medicine;

(3) remedial education, including but not limited to a residency, fellowship or other structured program;

(4) such other remedial or restrictive conditions or requirements that, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904185

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016

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CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §§166.1 - 166.4, 166.6

The Texas Medical Board (Board) proposes amendments to §§166.1 - 166.4 and 166.6, concerning Physician Registration.

The amendment to §166.1, relating to Physician Registration, adds new language to require licensees to submit emergency contact information, if available, pursuant to Senate Bill 292 passed by the 81st Legislature.

The amendment to §166.2, relating to Continuing Medical Education, deletes language relating to temporary continuing medical education licenses because these temporary licenses are no longer required since practicing with a delinquent license is not considered practicing without a license.

The amendment to §166.3, relating to Retired Physician Exception, deletes the requirement that a physician must have an active license and not be under investigation to qualify for the retired physician exception for continuing medical education (CME) requirements.

The amendment to §166.4, relating to Expired Registration Permits, adds language to require applicants for exceptions for CME requirements to pay delinquent fees in order to be eligible for an exception.

The amendment to §166.6, relating to Voluntary Charity Care Exemption, deletes the requirement that a licensee must apply for the exemption while the licensee's license is active.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing §166.1, will be to ensure that the Board collects licensee emergency contact information in the event of a public health emergency declared by the governor; as a result of enforcing §166.2, will be to clarify rules by removing obsolete language; as a result of enforcing §166.3, will be to allow retired physicians who do not practice medicine to maintain their licenses without the expense of having to obtain CME; as a result of enforcing §166.4, will be to require licensees to pay all delinquent registration fees before they may be exempt from CME requirements; as a result of enforcing §166.6, will be to allow licensees who wish to provide voluntary charity care and be exempt from CME requirements to obtain the exemption even if the license has been delinquent for less than one year.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §156.006, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§166.1. Physician Registration.

(a) Each physician licensed to practice medicine in Texas shall register with the board, submit a current physician profile, and pay a fee. A physician may obtain a registration permit ("permit") by submitting the required form and by paying the required registration fee to the board on or before the expiration date of the permit. The fee shall accompany an application prescribed by the board which sets forth the licensee's name, mailing address, primary practice site, and address for receipt of electronic mail if available.

(b) The board shall stagger initial registrations of newly-licensed physicians proportionally.

(c) The board shall provide notice to each physician at the physician's last known mailing address according to the records of the board at least 30 days prior to the expiration date of the registration permit and shall provide for a 30-day grace period for payment of the registration fee from the date of the expiration of the permit.

(d) Within 30 days of a physician's change of mailing or practice address or professional name from the addresses or professional name on file with the board, a physician shall notify the board in writing of such change and submit additional documentation if requested.

(e) All permits issued to license holders are valid for two-year periods.

(f) Emergency Contact Information.

(1) As part of the physician's registration application, each physician shall submit to the board telephone numbers, fax numbers, and e-mail addresses, if available and as appropriate, that the board may use to contact the license holder in an emergency.

(2) A licensed physician who receives an initial registration permit shall provide the information required under paragraph (1) of this subsection not later than the 30th day after the date the permit is issued to the extent the information has not been provided through a recent registration. Each physician who applies to renew a registration permit shall submit the information required under paragraph (1) of this subsection with the renewal application.

(3) A physician shall report to the board any change in the information required under paragraph (1) of this subsection not later than the 45th day after the date of the change.

(4) The information provided by a physician under this subsection is confidential and is not subject to disclosure under Chapter 552, Government Code. The board may not publish, release, or make available information provided by a license holder under this section except as provided by paragraph (5) of this subsection.

(5) In the event of a public health emergency declared or invoked by the governor, the Department of State Health Services, or a federal agency, the board may publish, release, or make available information provided by a physician under this subsection for the sole purpose of disseminating information to:

(A) a physician licensed by the board;

(B) a designated city, county, state, or federal public health or emergency management official; or

(C) the Federation of State Medical Boards.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the registration of a physician's permit a physician must complete 48 credits of continuing medical education (CME) every 24 months. CME credits must be completed in the following categories:

(1) At least 24 credits every 24 months are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the American Academy of Family Physicians;

(C) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association;

(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician's Recognition Award; or

(E) approved by the board for medical ethics and/or professional responsibility courses only.

(2) At least two of the 24 formal credits of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular credit of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining 24 credits for the 24-month period may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences not approved for formal CME, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(4) A physician whose practice includes treating patients in an emergency room setting may complete two credits of formal continuing medical education, as required by paragraph (1) of this subsection, relating to forensic evidence. To obtain credit for such courses, a course must include information regarding indicators of sexual assault and interviewing a person who may have been the victim of a sexual assault.

(5) A physician may complete one credit of formal continuing medical education, as required by paragraph (1) of this subsection, for each hour of time spent up to 12 hours, based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician competency or practice monitoring.

(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous 2 years.

(1) A licensee may carry forward CME credits earned prior to a registration report which are in excess of the 48-credit biennial requirement and such excess credits may be applied to the following years' requirements.

(2) A maximum of 48 total excess credits may be carried forward and shall be reported according to the categories set out in subsection (a) of this section.

(3) Excess CME credits of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the registration following the period during which the credits were earned.

(c) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists. This provision exempts the physician from all CME requirements, including the requirement for one credit involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section. This exemption is valid for one registration period only.

(d) A physician may request in writing an exemption for the following reasons:

- (1) catastrophic illness;
- (2) military service of longer than one year's duration outside the state;
- (3) medical practice and residence of longer than one year's duration outside the United States; or
- (4) good cause shown submitted in writing by the licensee, that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for CME.

(e) Exemptions are subject to the approval of the executive director or medical director and must be requested in writing at least 30 days prior to the expiration date of the permit.

(f) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed, subject to the approval of the board.

(g) Subsection (a) of this section does not apply to a licensee who is retired and has been exempted from paying the registration fee under §166.3 of this title (relating to Retired Physician Exception).

(h) This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional credits of CME or of specific course subjects.

(i) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(j) Physicians in residency/fellowship training or who have completed such training within six months prior to the registration expiration date, will satisfy the requirements of subsection (a)(1) and (2) of this section by their residency or fellowship program.

~~[(k) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the completion of the required number of credits of CME on his or her registration application as provided for in this section may result in the denial of the registration permit until such time as the physician obtains and reports the required CME credits. The executive director of the board may issue to the licensee a temporary CME license numbered so as to correspond to the nonrenewed license. Such a temporary CME license shall be issued upon receipt of a written request and fee for the license made prior to the expiration of the 30-day grace period for registration at the direction of the executive director for a period of no longer than~~

~~60 days. A temporary CME license issued pursuant to this subsection may be issued to allow the physician who has not obtained or timely reported the required number of credits an opportunity to correct any deficiency so as not to require termination of ongoing patient care.]~~

~~[(l) The fee for issuance of a temporary CME license pursuant to the provisions of this section shall be in the amount specified for temporary licenses under §175.1 of this title (relating to Fees).]~~

~~[(m) CME credits which are obtained during the 30 day grace period after the expiration of the licensee's permit [or while under a CME temporary license] to comply with the CME requirements for the preceding two years [as a prerequisite for obtaining a registration permit], shall first be credited to meet the CME requirements for the previous registration period and then any additional credits obtained shall be credited to meet the CME requirements for the current registration period.~~

~~[(n) A false report or false statement to the board by a licensee regarding CME credits reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §§164.051 - 164.053. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of \$500.~~

~~[(o) Administrative penalties for failure to timely obtain and report required CME credits may be assessed in accordance with §§187.75 - 187.82 of this title (relating to Imposition of Administrative Penalty) and §190.14 of this title (relating to Disciplinary Sanction Guidelines).~~

~~[(p) Unless exempted under the terms of this section, failure to obtain and timely report the CME credits on a registration permit application shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 of this title (relating to Penalties). Any [temporary CME licensure fee and any] administrative penalty imposed for failure to obtain and timely report the 48 credits of CME required for a registration permit application shall be in addition to the applicable penalties for late registration as set forth in §175.2 of this title.~~

§166.3. Retired Physician Exception.

The registration fee shall apply to all physicians licensed by the board, whether or not they are practicing within the borders of this state, except retired physicians.

(1) To become exempt from the registration fee due to retirement:

(A) the physician's current license must ~~[be active and]~~ not be under an investigation or order with the board or otherwise have a restricted license; and

(B) the physician must request in writing on a form prescribed by the board for his or her license to be placed on official retired status.

(2) The following restrictions shall apply to physicians whose licenses are on official retired status.

(A) the physician must not engage in clinical activities or practice medicine in any state;

(B) the physician may not prescribe or administer drugs to anyone, nor may the physician possess a Drug Enforcement Agency or Texas controlled substances registration; and

(C) the physician's license may not be endorsed to any other state.

(3) A physician whose license has been placed on official retired status must obtain the approval of the board before returning to active status by submitting a written request to the attention of the Permits Department of the board which indicates the following:

- (A) the physician's Texas medical license number;
- (B) current mailing address;
- (C) proposed practice location;
- (D) intended type of medical practice;
- (E) length of retired status;
- (F) any other medical licenses held;
- (G) any condition which adversely affects the physician's ability to practice medicine with reasonable skill and safety;
- (H) any current specialty board certifications; and,
- (I) any formal or informal continuing medical education obtained during the period of retired status.

(4) The request of a physician seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to passage of the Special Purpose Examination (SPEX), passage of the Medical Jurisprudence Examination, and/or passage of a specialty board certification examination.

(5) The request of a physician seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to passage of the Special Purpose Examination (SPEX), passage of the Medical Jurisprudence Examination, and/or passage of a specialty board certification examination.

(6) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the requesting physician at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the Licensure committee, or other designee(s) determined by majority vote of the board.

§166.4. Expired Registration Permits.

(a) If a physician's registration permit has expired, the physician may register for a new permit without monetary penalty during the first 30 days following expiration. If a physician's permit has been expired for longer than 30 days, but less than 91, the physician may obtain a new permit by submitting to the board a completed permit application, the registration fee, and a \$75 penalty fee.

(b) If a physician's registration permit has been expired for longer than 90 days but less than one year, the physician may obtain a

new permit by submitting a completed permit application, the registration fee, and a \$150 penalty fee.

(c) If a physician's registration permit has been expired for one year or longer, the physician's license is automatically canceled, unless an investigation is pending, and the physician may not obtain a new permit.

(d) In accordance with §156.008(a) of the Act, practicing medicine after the expiration of the 30-day grace period under subsection (a) of this section without obtaining a new registration permit for the current registration period has the same effect as, and is subject to all penalties of, practicing medicine without a license and may be subject to criminal penalties under §165.152 of the Act. However, the Board interprets §156.005 of the Act to provide the exclusive sanction that may be imposed by the board for practicing medicine after the 30-day grace period and within one year after expiration.

(e) All penalty fees must be paid before a physician may be determined eligible for a registration exception or CME exemption.

§166.6. Exemption From Registration Fee for Retired Physician Providing Voluntary Charity Care.

(a) A retired physician licensed by the board whose only practice is the provision of voluntary charity care shall be exempt from the registration fee.

(b) As used in this section:

(1) "voluntary charity care" means medical care provided for no compensation to:

- (A) indigent populations;
- (B) in medically underserved areas; or
- (C) for a disaster relief organization.

(2) "compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

(c) To qualify for and obtain such an exemption, a physician must truthfully certify under oath, on a form approved by the board~~], and received by the board at least 30 days prior to the expiration date of the permit,~~ that the following information is correct:

(1) the physician's practice of medicine does not include the provision of medical services for either direct or indirect compensation which has monetary value of any kind;

(2) the physician's practice of medicine is limited to voluntary charity care for which the physician receives no direct or indirect compensation of any kind for medical services rendered;

(3) the physician's practice of medicine does not include the provision of medical services to members of the physician's family; and

(4) the physician's practice of medicine does not include the self-prescribing of controlled substances or dangerous drugs.

(d) A physician who qualifies for and obtains an exemption from the registration fee authorized under this section shall obtain and report continuing medical education as required under the Act, §§156.051 - 156.055 and §166.2 of this title (relating to Continuing Medical Education), except that the number of credits of informal CME, as required by §166.2(a)(3) of this title shall be reduced from 24 credits to 20 credits.

(e) A retired physician who has obtained an exemption from the registration fee as provided for under this section, may be subject to disciplinary action under the Act, §§164.051 - 164.053, based on

unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the physician engages in the compensated practice of medicine, the provision of medical services to members of the physician's family, or the self-prescribing of controlled substances or dangerous drugs.

(f) A physician who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act, §164.052(a)(1), in addition to any civil or criminal actions provided for by state or federal law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904186

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



CHAPTER 168. CRIMINAL HISTORY EVALUATION LETTERS

22 TAC §168.1, §168.2

The Texas Medical Board (Board) proposes new §168.1 and §168.2, concerning Criminal History Evaluation Letters.

New §168.1, relating to Purpose, establishes the purpose of the chapter based on the passage of House Bill 963 during the 81st Legislative Session that allows potential applicants for licensure to obtain criminal history evaluation letters regarding potential eligibility for licensure.

New §168.2, relating to Criminal History Evaluation Letters, establishes the process for potential licensure applicants for obtaining criminal history evaluation letters pursuant to House Bill 963 passed during the 81st Legislative Session.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the new sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to permit a person to request a criminal history evaluation letter from the Board regarding a person's eligibility for a license well prior to the extensive application process and to establish the procedure whereby a person may request a criminal history evaluation letter from the Board regarding a person's eligibility for a license. The purpose of the rules is to allow a person to obtain such a letter who is enrolled or planning to enroll in an educational program or is planning to take an examination for the purpose of obtaining a license and has reason to believe that the person is ineligible for a license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to

comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new sections are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new sections are also authorized by §§53.101 et. seq., Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§168.1. Purpose.

The purpose of this chapter is to provide a process by which an individual may request a criminal history evaluation letter regarding the person's eligibility for a license issued by the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners, as allowed by §53.102 of the Texas Occupations Code.

§168.2. Criminal History Evaluation Letters.

(a) Prior to applying for licensure, an individual seeking licensure may request that agency staff review the person's criminal history to determine if the person is ineligible for licensure based solely on the person's criminal background.

(b) Requestors must submit their requests in writing along with appropriate fees as provided in §175.1 of this title (relating to Application Fees).

(c) The agency may require additional documentation including fingerprint cards before issuing a criminal history evaluation letter.

(d) The agency shall provide criminal history evaluation letters that include the basis for ineligibility if grounds for ineligibility exist to all requestors no later than the 90th day after the agency receives all required documentation to allow the agency to respond to a request.

(e) If a requestor does not provide all requested documentation within one year of submitting the original request, the requestor must submit a new request along with appropriate fees.

(f) All evaluations letters shall be based on existing law at the time of the request. All requestors remain subject to the requirements for licensure at the time of application and may be determined ineligible under existing law at the time of application. If a requestor fails to provide complete and accurate information to the agency, the agency may invalidate the criminal history evaluation letter.

(g) An individual shall be permitted to apply for licensure, regardless of the agency's determination in a criminal history evaluation letter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904187

CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §§171.3 - 171.5

The Texas Medical Board (Board) proposes amendments to §§171.3 - 171.5, concerning Postgraduate Training Permits.

The amendment to §171.3, relating to Physician-in-Training Permits, removes "board-approved fellowship" from the definition of "fellowship" to avoid misinterpretation that a board-approved fellowship may be obtained prior to completion of other residency training and adds a definition for "subspecialty training program."

The amendment to §171.4, relating to Board-Approved Fellowships, clarifies provisions relating to board-approved fellowships consistent with changes proposed to §171.3.

The amendment to §171.5, relating to Duties of PIT Holders to Report, requires PIT holders to report criminal fines of \$250 rather than \$100.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing §171.3 and §171.4, will be to provide more clarity to the rules; as a result of enforcing §171.5, will be to avoid requesting information that is not subject to action by the Board.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.105, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§171.3. Physician-in-Training Permits.

(a) Definitions.

(1) Approved Postgraduate Training Program: a clearly defined and delineated postgraduate medical education training program, including postgraduate subspecialty training programs, approved by the Accreditation Council for Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), the Committee on Accreditation of Preregistration Physician Training Programs, the Feder-

ation of Provincial Medical Licensing Authorities of Canada (internships prior to 1994), the Royal College of Physicians and Surgeons of Canada, or the College of Family Physicians of Canada.

(2) Board-approved Fellowship: a clearly defined and delineated postgraduate subspecialty-training program approved by the Texas Medical Board under §171.4 of this title.

(3) Designated Institutional Official (DIO): The individual in a sponsoring graduate medical education institution who has the authority and responsibility for the graduate medical education programs.

(4) Fellowship: A subspecialty training program of graduate medical education for postgraduate residents who have completed the requirements for eligibility for first board certification in the specialty and that is approved by the Accreditation Council for Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), a member board of the American Board of Medical Specialties (ABMS), or a member board of the Bureau of Osteopathic Specialists (BOS) [or a fellowship approved by the Texas Medical Board].

(5) Postgraduate Resident: a physician who is in postgraduate training as an intern, resident, or fellow in an approved postgraduate training program or a board-approved fellowship.

(6) Physician-in-Training Permit:

(A) A physician-in-training permit is a permit issued by the board in its discretion to a physician who does not hold a license to practice medicine in Texas and is enrolled in a training program as defined in paragraphs (1), (2), and (4) of this subsection in Texas, regardless of his/her postgraduate year (PGY) status within the program.

(B) The permit shall be effective for the length of the postgraduate training program as reported by the training program.

(C) A physician-in-training permit is valid only for the practice of medicine within the training program for which it was approved. If a permit holder enters into a new program that is not covered by the issued permit, the permit shall be terminated and the permit holder must apply for a new permit for the new program.

(D) A physician-in-training permit holder is restricted to the supervised practice of medicine that is part of and approved by the training program. The permit does not allow for the practice of medicine that is outside of the approved program.

(7) Subspecialty-Training Program--A postgraduate training program, also known as a fellowship, entered into after the completion of a residency program that provides advanced graduate medical education in a narrow field of study within a medical specialty.

(b) Qualifications of Physician-in-Training Permit Holders.

(1) To be eligible for a physician-in-training permit, an applicant must present satisfactory proof to the board that the applicant:

(A) is at least 18 years of age;

(B) is of good professional character and has not violated §§164.051 - 164.053 of the Medical Practice Act;

(C) is a graduate of a medical school or has completed a Fifth Pathway Program;

(D) has been accepted into an approved postgraduate training program, a board-approved postgraduate fellowship training program, or a fellowship meeting the criteria set forth in subsection (a)(4) of this section; and

(E) has been credentialed by the postgraduate training program to include verification by the program of:

- (i) the applicant's identity; and
- (ii) the applicant's character and academic qualifications including verification of medical school graduation.

(2) To be eligible for a physician-in-training permit, an applicant must not have:

(A) a medical license, permit, or other authority to practice medicine that is currently restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(B) an investigation or proceeding pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(C) a prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony, a misdemeanor that involves the practice of medicine, or a misdemeanor that involves a crime of moral turpitude.

(c) Application for Physician-in-Training Permit.

(1) Application Procedures.

(A) Applications for a physician-in-training permit shall be submitted to the board no earlier than the 120th day prior to the date the applicant intends to begin postgraduate training in Texas to ensure the application information is not outdated. To assist in the expedited processing of the application, the application should be submitted as early as possible within the sixty-day window prior to the date the applicant intends to begin postgraduate training in Texas.

(B) The board may, in unusual circumstances, allow substitute documents where exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions shall be reviewed by the board's executive director on a case-by-case basis.

(C) For each document presented to the board, which is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a government official, official translation agency, or a college or university official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate." He/she must sign the translation with his/her signature notarized by a Notary Public. The translator's name and title must be typed/printed under the signature.

(D) The board's executive director shall review each application for training permit and shall approve the issuance of physician-in-training permits for all applicants eligible to receive a permit. The executive director shall also report to the board the names of all applicants determined to be ineligible to receive a permit, together with the reasons for each recommendation. The executive director may refer any application to a committee or panel of the board for review of the application for a determination of eligibility.

(E) An applicant deemed ineligible to receive a permit by the executive director may request review of such recommendation by a committee or panel of the board within 20 days of written receipt of such notice from the executive director.

(F) If the committee or panel finds the applicant ineligible to receive a permit, such recommendation together with the reasons for the recommendation, shall be submitted to the board unless the applicant makes a written request for a hearing within 20 days of receipt of notice of the committee's or panel's determination. The hearing shall

be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act, the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant to receive a permit. A physician whose application to receive a permit is denied by the board shall receive a written statement containing the reasons for the board's action.

(G) All reports and investigative information received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act, Gov't Code Chapter 552 and the Medical Practice Act, Tex. Occ. Code §§155.007(g), 155.058, and 164.007(c). The board may disclose such reports and investigative information to appropriate licensing authorities in other states.

(H) All applicants for physician-in-training permits whose applications have been filed with the board in excess of one year will be considered expired.

(I) If the Executive Director determines that the applicant clearly meets all PIT requirements, the Executive Director or a person designated by the Executive Director, may issue a permit to the applicant, to be effective on the date of the reported first date of the training program without formal board approval, as authorized by §155.002(b) of the Act.

(J) If the Executive Director determines that the applicant does not clearly meet all PIT requirements, a PIT may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §155.007 of the Act (relating to Application Process) and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility).

(K) If the Executive Director determines that the applicant is ineligible for a PIT for one or more reasons listed under subsection (b)(1)(A) and (C) - (E) of this section, the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued.

(2) Physician-in-Training Permit Application. An application for a physician-in-training permit must be on forms furnished by the board and include the following:

(A) the required fee as mandated in the Medical Practice Act, §153.051 and as construed in board rules;

(B) certification by the postgraduate training program:

(i) for a Texas postgraduate training program, a certification must be completed by the director of medical education, the chair of graduate medical education, the program director, or, if none of the previously named positions is held by a Texas licensed physician, the Texas Licensed physician supervising physician of the postgraduate training program on a form provided by the board that certifies that:

(I) the program meets the definition of an approved postgraduate training program in subsection (a)(1), (a)(2), and (a)(4) of this section;

(II) the applicant has met all educational and character requirements established by the program and has been accepted into the program; and

(III) the program has received a letter from the dean of the applicant's medical school that states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training, if the applicant has not yet graduated from medical school.

(ii) if the applicant is completing rotations in Texas as part of the applicant's residency out-of-state training program or with the military:

(I) a certification must be completed by the director of medical education, the chair of graduate medical education, the program director, or, if none of the previously named positions is held by a physician licensed in any state, the supervising physician, licensed in any state, of the postgraduate training program on a form provided by the board that certifies that:

(-a-) the program meets the definition of an approved postgraduate training program in subsection (a)(1), (a)(2), and (a)(4) of this section;

(-b-) the applicant has met all educational and character requirements established by the program and has been accepted into the program;

(-c-) the program has received a letter from the dean of the applicant's medical school which states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training, if the applicant has not yet graduated from medical school; and

(II) a certification by the Texas Licensed physician supervising the Texas rotations of the postgraduate training program on a form provided by the board that certifies:

(-a-) the facility at which the rotations are being completed,

(-b-) the dates the rotations will be completed in Texas, and

(-c-) that the Texas on-site preceptor physician will supervise and be responsible for the applicant during the rotation in Texas;

(C) arrest records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition must be requested from the arresting authority by the applicant and said authority must submit copies directly to the board;

(D) medical records for inpatient treatment for alcohol/substance disorder, mental illness, and physical illness. Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance disorder, mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(i) an applicant's statement explaining the circumstances of the hospitalization;

(ii) all records, submitted directly from the inpatient facility;

(iii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iv) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee;

(E) medical records for outpatient treatment for alcohol/substance disorder, mental illness, or physical illness. Each appli-

cant that has been treated on an outpatient basis within the last five years for alcohol/substance abuse, mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(i) an applicant's statement explaining the circumstances of the outpatient treatment;

(ii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iii) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee;

(F) an oath on a form provided by the board attesting to the truthfulness of statements provided by the applicant;

(G) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

(d) Expiration of Physician-in-Training Permit.

(1) Physician-in-Training permits shall be issued with effective dates corresponding with the beginning and ending dates of the postgraduate resident's training program as reported to the board by the program director.

(2) Physician-in-training permits shall expire on any of the following, whichever occurs first:

(A) on the reported ending date of the postgraduate training program;

(B) on the date a postgraduate training program terminates or otherwise releases a permit holder from its training program; or

(C) on the date the permit holder obtains full licensure or temporary licensure pending full licensure pursuant to §155.002 of the Act.

(3) Physician-in-training permit holders who are issued permits on or after April 1, 2005, and who require extensions to remain in a training program after a program's reported ending date must submit a written request to the board and fee, if required, along with a statement by the program director authorizing the request for the extension. Such extensions shall be granted at the discretion of the board's executive director and may not be for longer than 90 days unless good cause is shown.

(e) The executive director of the board may, in his/her discretion, issue a temporary physician-in-training ~~physician-in-training~~ permit to an applicant if the applicant and the postgraduate training program have submitted written requests. The executive director, in his/her discretion, will determine the length of the permit and may issue additional temporary physician-in-training permits to an applicant.

§171.4. Board-Approved Fellowships.

(a) The executive director may in his/her discretion, upon written request, approve fellowships as referenced in §171.3(a)(2) of this chapter. Fellowships meeting the criteria set forth in §171.3(a)(4) of this chapter do not require board approval for physician in training permits to be issued to subspecialty postgraduate residents in the fellowship. If the executive director does not recommend approval, the institution's designated institutional official (DIO) and chair of the Graduate Medical Education Committee (GMEC) may appeal to the board for its discretionary consideration of the request.

(b) The initial request for approval should be submitted to the executive director, on a form prescribed by the board, 90 days prior to the beginning date of the program to assist in the expedited processing of an application. The request must include the length of the fellowship; the length of time for which the institution is requesting approval of the fellowship itself, not to exceed five years; and other information as required by the board.

(c) Approval of fellowships requires certification by the DIO and the chair of the GMEC of the institution in which the fellowship will be conducted that the fellowship program has been evaluated and approved by the institution's graduate medical education committee. The evaluation shall include but not be limited to satisfactory demonstration to the committee of the fellowship's:

(1) goals and objectives; documented curriculum; and, qualifications of the program director and program faculty, including, but not limited to, certification by the appropriate specialty board and/or appropriate educational qualifications;

(2) process by which subspecialty postgraduate residents are selected;

(3) prerequisite requirements of the subspecialty postgraduate residents, including whether prior residency training in a related specialty is required;

(4) delineated duties and responsibilities required of subspecialty postgraduate residents in the program;

(5) number of subspecialty postgraduate residents to be enrolled each year;

(6) scholarly activity to be required of subspecialty postgraduate residents;

(7) type of supervision to be provided for subspecialty postgraduate residents;

(8) requirements for the program director or supervising physician to hold a Texas license or faculty temporary license issued by the board;

(9) methods for evaluation of subspecialty postgraduate residents by the program; and

(10) progressive nature, including, but not limited to, the progressively greater responsibility of the subspecialty postgraduate residents throughout the course of the fellowship if the fellowship is over one year in length.

(d) Institutions with board-approved fellowships must determine whether to conduct internal reviews of the program at the midpoint of the program's most recent approval period.

(e) Institutions with board-approved fellowships that are eligible for accreditation as described in §171.3(a)(4) of this chapter must determine whether the fellowship should seek such accreditation rather than board approval of the fellowship.

(f) The DIO and the chair of the GMEC of the institution for which a fellowship program has been previously approved by the board must apply to have the program approved again, if the program is to continue after the expiration date. Applications for subsequent approval must comply with all requirements in this section for initial approval and must be submitted at least three months prior to the expiration of the approved program in order to prevent a lapse in time of the fellowship. Permit holders shall be allowed to complete their fellowship regardless of continuing program approval.

(g) All board-approved fellowships that subsequently become approved by the ACGME, AOA, a member board of the ABMS, or a

member board of the BOS, must notify the board within 30 days of their approval. Fellowships may not be dually approved by the board and ACGME, AOA, a member board of the ABMS, or a member board of the BOS. A board-approved fellowship that becomes approved by the ACGME, AOA, a member board of the ABMS, or a member board of the BOS immediately loses its board-approved status when its new approval becomes effective through the ACGME, AOA, a member board of the ABMS, or a member board of the BOS.

§171.5. Duties of PIT Holders to Report.

(a) Failure of any PIT holder to comply with the provisions of this chapter or the Medical Practice Act §160.002 and §160.003 may be grounds for disciplinary action as an administrative violation against the PIT holder.

(b) The PIT holder shall report in writing to the executive director of the board the following circumstances within thirty days of their occurrence:

(1) the opening of an investigation or disciplinary action taken against the PIT holder by any licensing entity other than the TMB;

(2) an arrest, fine (over \$250 [~~\$100~~]), charge or conviction of a crime, indictment, imprisonment, placement on probation, or receipt of deferred adjudication; and

(3) diagnosis or treatment of a physical, mental or emotional condition, which has impaired or could impair the PIT holder's ability to practice medicine.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904188

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board (Board) proposes amendments to §172.8 and new §172.16, concerning Temporary and Limited Licenses.

The amendment to §172.8, relating to Faculty Temporary License, allows applicants for faculty temporary licenses (FTL) to be given additional attempts on the jurisprudence examination if good cause is shown; requires sponsoring institutions to affirm that the institutions have reviewed the physician's professional and criminal background; and, pursuant to Senate Bill 1225 passed by the 81st Legislature, allows nonprofit corporations that are affiliated with programs accredited by the Accreditation Council for Graduate Medical Education to sponsor physicians for FTLs.

The new language added as a new rule to §172.16, relating to Provisional Licenses for Medically Underserved Areas, is based on adoption of Senate Bill 202 by the 81st legislature to allow

applicants for full licensure to obtain provisional licenses under certain conditions to work in medically underserved areas prior to having a determination made on the applicants' applications for full licensure.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to provide consistency regarding passage of the jurisprudence examination and permit an institutional sponsor of an accredited graduate medical education program or a certified nonprofit health corporation to sponsor a physician for an FTL provided the physician meets certain criteria and to provide greater access to medical care in underserved areas, by granting to an applicant who is licensed and in good standing in another state a provisional license to practice medicine in an area designated by the federal government as a health professional shortage area or by the federal or state government as a medically underserved area.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

SUBCHAPTER B. TEMPORARY LICENSES

22 TAC §172.8

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §155.104, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§172.8. *Faculty Temporary License.*

(a) The board may issue a faculty temporary license to practice medicine to a physician in accordance with §155.104, Tex. Occ. Code. "Physician," as used in that statute and in this section, is interpreted to mean a person who holds an M.D., D.O., or equivalent degree and who is licensed to practice medicine in another state or a Canadian province or has completed at least three years of postgraduate residency, but does not hold a license to practice medicine in this state.

(1) Each medical license held in any state, territory, or Canadian province must be free of any restrictions, disciplinary order or probation.

(2) The physician must have passed the Texas medical jurisprudence examination within three attempts, with a score of 75 or better, unless the board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the licensure committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

(3) "Institution," as used in this section, shall mean any of the following:

(A) a school of medicine in this state accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education;

(B) The University of Texas Health Center at Tyler;

(C) The University of Texas M.D. Anderson Cancer Center; [or]

(D) an institutional sponsor of a graduate medical education program [a program of graduate medical education,] accredited by the Accreditation Council for Graduate Medical Education or, [; that exceeds the requirements for eligibility for first board certification in the discipline]

(E) a nonprofit health corporation certified under §162.00, Medical Practice Act, and affiliated with a program as described in subparagraph (D) of this paragraph.

(4) The physician must:

(A) hold a salaried faculty position equivalent to a [of] assistant professor-level or higher as determined by the institution working full-time in one of the institutions; or

(B) hold a faculty position equivalent to a [of] assistant professor-level or higher as determined by the institution, work at least part-time in one of the institutions and;

(i) be on active duty in the United States military; and,

(ii) be engaged in a practice under the faculty temporary license that will fulfill a critical need of the citizens of Texas.

(5) The physician must sign an oath on a form provided by the board swearing that the physician has read and is familiar with board rules and the Medical Practice Act; will abide by board rules and the Medical Practice Act in activities permitted by this section; and will subject themselves to the disciplinary procedures of the board.

(b) The faculty temporary license shall be issued for a period of one year. The holder of a faculty temporary license may apply for one or more successive faculty temporary licenses.

(c) The faculty temporary license holder's practice of medicine shall be limited to the teaching confines of the applying institution [medical school] as a part of duties and responsibilities assigned by the institution [school] to the physician.

(d) The physician may participate in the full activities of the department of any hospital for which the physician's institution [medical school] has full responsibility for clinical, patient care, and teaching activities. "Full responsibility" means that the institution [medical school] has agreed to provide physicians to see patients in the hospital and that the institution [medical school] provides any necessary supervision for such physicians.

(e) The physician and the institution [school] shall file affidavits with the board affirming acceptance of the terms, limitations, and conditions imposed by the board on the medical activities of the physician. The institution must also affirm in its affidavit that prior to filing the affidavit, the institution has reviewed the physician's criminal background, disciplinary history with other state licensing entities, and medical malpractice history.

(f) The application and fee for the faculty temporary license shall be presented to the executive director of the board at least 30 days prior to the effective date of the appointment of the physician.

(g) The application shall be made by the chairman of the department of the institution in which the physician teaches or the person holding the equivalent position at the institution where the physician teaches, [will teach] and provide such information and documentation to the board as may be requested.

(h) The application shall be endorsed by the dean of the medical school or by the president of the institution. An endorsement must include a statement that the medical school or institution has investigated and determined the physician to be of good professional character and fit to practice medicine. An endorsement shall also state that the medical school or institution has accepted the responsibility to properly supervise the medical activities of the physician.

(i) Three years in a teaching faculty position at any institution listed in subsection (a)(3) of this section may be equivalent to three years of approved postgraduate training if, at the conclusion of this three-year period, the physician presents recommendations in his or her behalf from the chief administrative officer and the president of the institution. A recommendation must include verification that the physician has completed at least three years in a teaching faculty position at the level of assistant professor or higher and that the duties of the physician in such position required activities that demonstrate that the physician's medical competence is substantially equivalent to the competence of a person who has completed three years of an approved postgraduate residency program as described in §171.3(a)(1) of this title (relating to Physician-in-Training Permits).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904189

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.16

The new section is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new section is also authorized by §155.104, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§172.16. Provisional Licenses for Medically Underserved Areas.

(a) The board may issue a provisional license to an applicant for a license who:

(1) is licensed in good standing with another state medical licensing entity;

(2) passed an examination within the number of allowed attempts as provided under §163.6 of this title (relating to Examinations Accepted for Licensure);

(3) submits information to the board to be used for criminal background checks; and

(4) is sponsored by a person licensed under the Medical Practice Act with whom the applicant may practice under unless the board waives this requirement after determination that compliance with this provision constitutes a hardship to the applicant.

(b) An applicant who holds a provisional license may only practice in a location that is:

(1) designated by the federal government as a health professional shortage area; or

(2) designated by the federal or state government as a medically underserved area.

(c) An applicant shall be determined ineligible for a provisional license if the applicant:

(1) has had a medical license suspended or revoked by another state or a Canadian province;

(2) holds a medical license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(3) has an unacceptable criminal history.

(d) A provisional license expires on the earlier of:

(1) the date the board issues the provisional license holder a full Texas medical license or denies the provisional license holder's application for a license; or

(2) the 270th day after the date the provisional license was issued.

(e) An individual may not be granted more than one provisional license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904190

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



CHAPTER 173. PHYSICIAN PROFILES

22 TAC §173.1, §173.4

The Texas Medical Board (Board) proposes amendments to §173.1 and §173.4, concerning Physician Profiles.

The amendment to §173.1, relating to Profile Contents, clarifies that a licensee's mailing address will be posted on the licensee's profile only if the licensee does not provide a practice address to the board and requires the removal of references to medical mal-

practice investigations if closed by the Board for over five years and no disciplinary action was ever taken.

The amendment to §173.4, relating to Updates to the Physician's Profile Due to Board Action, requires the removal of references on a licensee's profile of complaints filed at the State Office of Administrative Hearings when the complaint has been dismissed for over five years and was determined to be baseless or no action was ever taken on the complaint.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to ensure that licensee's addresses are made available to the public and that potentially prejudicial information about licensees is removed when no Board disciplinary action is taken and that potentially prejudicial information about licensees is removed when no Board disciplinary action is taken against the licensees.

Ms. Leshikar, has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §154.006, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§173.1. Profile Contents.

(a) The Texas Medical Board (the "board") shall develop and make available to the public a comprehensive profile of each licensed physician electronically via the Internet or in paper format upon request.

(b) The profile of each licensed physician shall contain the following information listed in paragraphs (1) - (27) of this subsection:

- (1) full name as the physician is licensed;
- (2) place of birth if the physician requests that it be included in the physician's profile;
- (3) year of birth;
- (4) gender;
- (5) ethnic origin if the physician requests that it be included in the physician's profile;
- (6) name of each medical school attended and the dates of:
 - (A) graduation; or
 - (B) Fifth Pathway designation and completion of the Fifth Pathway Program;

(7) a description of all graduate medical education in the United States or Canada, including:

- (A) beginning and ending dates;
- (B) program name;
- (C) city and state of program;
- (D) type of training (internship, residency or fellowship); and
- (E) specialty of program;

(8) any specialty certification held by the physician and issued by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;

(9) primary and secondary specialties practiced, as designated by the physician;

(10) the number of years the physician has actively practiced medicine in:

- (A) the United States or Canada; and
- (B) Texas;

(11) the original date of issuance of the physician's Texas medical license;

(12) the expiration date of the physician's registration permit;

(13) the physician's current registration, disciplinary and licensure statuses;

(14) the name and city of each hospital in Texas in which the physician has privileges;

(15) the physician's primary practice location (street address, city, state and zip code);

(16) the physician's mailing address (street or P.O. Box address, city, state, and zip code), if the physician does not have a primary practice location;

(17) the type of language translating services, including translating services for a person with impairment of hearing, that the physician provides at the physician's primary practice location;

(18) whether the physician participates in the Medicaid program;

(19) whether the physician's patient service areas are accessible to disabled persons, as defined by federal law;

(20) a description of any conviction for an offense constituting a felony, a Class A or Class B misdemeanor, or a Class C misdemeanor involving moral turpitude;

(21) a description of any charges reported to the board to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court of competent jurisdiction;

(22) a description of any public board action against the physician;

(23) a description of any disciplinary action against the physician by a medical licensing board of another state;

(24) a description of the final resolution taken by the board on medical malpractice claims or complaints required to be opened by the board under the Medical Practice Act (the "Act"), Tex. Occ. Code

Ann. §164.201 unless the investigation was resolved more than five years before the date of the update and no action was taken against the physician's license as a result of the investigation;

(25) a description of any formal complaint issued by the board's staff against the physician and initiated and filed with the State Office of Administrative Hearings under §164.005 of the Act and the status of the complaint;

(26) a description of a maximum of five awards, honors, publications or academic appointments submitted by the physician, each no longer than 120 characters; and

(27) a description of any medical malpractice claim against the physician, not including a description of any offers by the physician to settle the claim, for which the physician was found liable, a jury awarded monetary damages to the claimant, and the award has been determined to be final and not subject to further appeal.

§173.4. Updates to the Physician's Profile Due to Board Action.

(a) When the board takes disciplinary action or files a formal complaint at the State Office of Administrative Proceedings pursuant to Section 164.005 of the Act against a physician, such action shall be noted on the physician's profile not later than the 10th working day after the board's action occurs and shall be made available to the public.

(b) All records relating to formal complaints that have been posted on a physician's profile shall be removed if:

(1) the complaint was dismissed more than five years before the date of the update; and

(2) the complaint was dismissed as baseless, unfounded, or not supported by sufficient evidence that a violation occurred, or no action was taken against the physician's license as a result of the complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904191

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



CHAPTER 174. TELEMEDICINE

The Texas Medical Board (Board) proposes amendments to §§174.1, 174.2, and 174.6, the repeal of §174.4, and new §174.7 and §174.8, concerning Telemedicine.

The amendment to §174.1, relating to Purpose, provides the statutory authority for the chapter and clarifies that the chapter does not apply to special purpose telemedicine licenses for those doctors who practice outside of Texas.

The amendment to §174.2, relating to Definitions, defines "distant-site physician", "patient-site location," and "patient-site presenter" and amends the definition for "telemedicine medical services."

The repeal of §174.4, relating to Use of the Internet in Medical Practice, repeals this section, and it is proposed as a new rule under §174.8.

The amendment to §174.6, relating to Delegation to and Supervision of Patient Site Presenters, amends language so that it is consistent with proposed changes to the definition of patient-site presenters and sets out the requirements for patient encounters and delegation and supervision of patient-site presenters.

New §174.7, relating to Medical Records for Telemedicine Medical Services, establishes the requirements for the contents and possession of medical records for telemedicine medical services.

New §174.8, relating to Use of the Internet in Medical Practice, adopts all language from the 174.4 that is being repealed and includes language that state licensure is not required for out-of-state physicians who provide episodic consultations and are exempt from having to obtain special purpose telemedicine licenses.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing §174.1, will be to clarify the purpose and application of the chapter; as a result of enforcing §174.2, will be to ensure that the provision of telemedicine medical services is provided by certain licensed health care professionals; as a result of enforcing §174.4, will be to provide more clarity to the rules by moving the text of the section to a more appropriate place; as a result of enforcing §174.6, will be to ensure that the provision of telemedicine medical services is provided by certain licensed health care professionals and that the delegation of related services is done appropriately, as a result of enforcing §174.7, will be to ensure that medical records are appropriately maintained in relation to telemedicine medical services; as a result of enforcing §174.8, will be to provide more clarity to the rules.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

22 TAC §§174.1, 174.2, 174.6 - 174.8

The amendments and new sections are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments and new sections are also authorized by §153.004, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§174.1. Purpose.

Pursuant to §153.004 of the Medical Practice Act, the Board is authorized to adopt rules relating to Telemedicine Services. This chapter is promulgated to establish standards for the use of the Internet and the provision of telemedicine medical services by physicians who are li-

censed to practice medicine in this State. This chapter does not apply to special purpose telemedicine licenses issued by the Board pursuant to §151.056 of the Act and §172.12 of this title (relating to Telemedicine License).

§174.2. Definitions.

The following words and terms, when used in this chapter shall have the following meanings unless the context indicates otherwise.

(1) Distant site physician--A physician that uses telemedicine to provide health care services to a patient in Texas. The physician must be licensed to practice medicine in Texas.

(2) [(4)] Medical practice site--A patient-specific Internet site, access to which is limited to licensed physicians, associated medical personnel and patients. It is an interactive site and thus qualifies as a practice location. It requires a defined physician-patient relationship.

(3) [(2)] Medium--Any mechanism of information transfer including electronic means.

(4) Patient site location--The patient site location is where the patient is physically located and limited to medically underserved areas.

(5) Patient site presenter--The patient site presenter is the individual at the patient site location who introduces the patient to the distant site physician for examination and to whom the distant site physician may delegate tasks and activities. A patient site presenter must be licensed in the state as an advanced practice nurse, physician assistant, or physician.

(6) [(3)] Person--An individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(7) [(4)] Physician-patient e-mail--A computer-based communication between physician (or their medical personnel) and patients within a professional relationship in which the physician has taken on an explicit measure of responsibility for the patient's care.

(8) [(5)] Telemedicine medical service--The practice of health care delivery, by a distant site physician licensed by the Texas Medical Board who is physically located at a Texas site other than the site where the patient is located, for the purposes of evaluation, diagnosis, consultation, or treatment that requires the use of advanced telecommunications technology. Telephone conversations, chart reviews, electronic mail messages, and facsimile transmissions, not constituting the practice of medicine are not considered telemedicine. [A health care service initiated by a physician or provided by a health professional acting under physician delegation and supervision; for purposes of assessment by a health professional; diagnosis or consultation by a physician; treatment, or the transfer of medical data; that requires the use of advanced telecommunications other than by telephone or facsimile as described in §57.042 of the Utilities Code.]

[(6)] Telepresenter--a remote site provider, as defined in 4 TAC §354.1430, who is not a physician, registered nurse, advanced practice nurse or physician assistant, unless such physician, registered nurse, advanced practice nurse or physician assistant is a qualified mental health professional as defined in §531.02175(a) of the Government Code.]

§174.6. Delegation to and Supervision of Patient Site Presenters [Telepresenters].

(a) A distant site physician may delegate tasks and activities to a patient site presenter during a patient encounter. [telepresenter who is qualified by licensing, training or experience for the performance of the task or activity as long as the task or activity does not require the exercise of independent medical judgment for its performance:]

(b) A distant site physician delegating tasks or activities to a patient site presenter [telepresenter] shall ensure that the patient site presenter [telepresenter] to whom delegation is made is adequately supervised during the patient encounter when telemedicine medical services are provided. The distant site physician may write orders for treatment after the patient encounter to only a licensed health care practitioner. [qualified by licensure, training, or experience to perform the task or activity delegated:]

(c) A patient site presenter must be at the patient site location throughout the patient encounter when the telemedicine medical service is provided [physician delegating tasks or activities to a telepresenter shall ensure that the telepresenter to whom delegation is made is adequately supervised].

§174.7. Medical Records for Telemedicine Medical Services.

(a) Medical records must be maintained for all telemedicine medical services. Both the distant site physician and the patient site presenter must maintain the records.

(b) Distant site physicians must obtain an adequate medical history for the patient prior to providing telemedicine medical services and must document this in the medical record.

§174.8. Use of the Internet in Medical Practice.

(a) Evaluation of the Patient. Physicians who utilize the Internet must ensure a proper physician-patient relationship is established that at a minimum includes:

(1) establishing that the person requesting the treatment is in fact who the person claims to be;

(2) establishing a diagnosis through the use of acceptable medical practices such as patient history, mental status examination, physical examination, and appropriate diagnostic and laboratory testing to establish diagnoses and identify underlying conditions and/or contraindications to treatment recommended/provided;

(3) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(4) ensuring the availability of the physician or coverage of the patient for appropriate follow-up care.

(b) Treatment. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (face-to-face) settings. An online or telephonic evaluation by questionnaire does not constitute an acceptable standard of care.

(c) State Licensure. Physicians who treat and prescribe through the Internet are practicing medicine and must possess appropriate licensure in all jurisdictions where patients reside. An out-of-state physician may provide episodic consultations without a Texas medical license, as provided in Texas Occupations Code, §151.056 and §172.12(f) of this title (relating to Telemedicine License - Exemptions).

(d) Electronic Communications.

(1) Written policies and procedures must be maintained when using electronic mail for physician-patient communications. Policies must be evaluated periodically for currency. Such policies and procedures must address:

(A) privacy to assure confidentiality and integrity of patient-identifiable information;

(B) health care personnel, in addition to the physician, who will process messages;

(C) hours of operation and availability;
(D) types of transactions that will be permitted electronically;

(E) required patient information to be included in the communication, such as patient name, identification number and type of transaction;

(F) archival and retrieval; and

(G) quality oversight mechanisms.

(2) All patient-physician e-mail, as well as other patient-related electronic communications, must be stored and filed in the patient's medical record.

(3) Patients must be informed of alternative forms of communication for urgent matters.

(e) Medical Records.

(1) Medical records must include copies of all patient-related electronic communications, including patient-physician e-mail, prescriptions, laboratory and test results, evaluations and consultations, records of past care and instructions.

(2) Notice of privacy practices related to the use of e-mail must be filed in the medical record.

(f) Disclosure. Physician medical practice sites must clearly disclose:

(1) ownership of the website;

(2) specific services provided;

(3) office address and contact information;

(4) licensure and qualifications of physician(s) and associated health care providers;

(5) fees for online consultation and services and how payment is to be made;

(6) financial interest in any information, products, or services;

(7) appropriate uses and limitations of the site, including providing health advice and emergency health situations;

(8) uses and response times for e-mails, electronic messages, and other communications transmitted via the site;

(9) to whom patient health information may be disclosed and for what purpose;

(10) rights of patients with respect to patient health information; and

(11) information collected and any passive tracking mechanisms utilized.

(g) Accountability. Medical practice sites must provide patients with a clear mechanism to:

(1) access, supplement, and amend patient-provided personal health information;

(2) provide feedback regarding the site and the quality of information and services; and

(3) register complaints, including information regarding filing a complaint with the Texas Medical Board as provided for in Chapter 178 of this title (relating to Complaints).

(h) Advertising/Promotion of Goods or Products. Advertising or promotion of goods or products from which the physician receives direct remuneration or incentives is prohibited.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904192

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



22 TAC §174.4

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The repeal is also authorized by §153.004, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§174.4. *Use of the Internet in Medical Practice.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904193

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



CHAPTER 175. FEES, PENALTIES AND FORMS

The Texas Medical Board (Board) proposes an amendment to §175.1 and the repeal of §175.4, concerning Fees, Penalties, and Forms.

The amendment to §175.1, relating to Application Fees, deletes references to temporary licenses for medically underserved areas, establishes fees for physician-in-training permits for physicians who perform rotations in Texas, and sets fees for criminal history evaluation letters.

The repeal of §175.4, relating to Application Form, repeals the section based on the determination that it was no longer needed and created confusion when forms became obsolete or required name changes.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to provide clarity to the rules, and allow members of the public to obtain criminal evaluation letters prior to applying for licensure and to avoid confusion in the rules.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

22 TAC §175.1

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §§53.105, 153.001, 155.105, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§175.1. Application Fees.

The board shall charge the following fees for processing an application for a license or permit:

(1) Physician Licenses:

(A) Full physician license (includes surcharge of \$205)--\$885.

(B) Telemedicine license (includes surcharge of \$205)--\$885.

(C) Administrative medicine license (includes surcharge of \$205)--\$885.

(D) Reissuance of license following revocation (includes surcharge of \$205)--\$885.

(E) Temporary license:

(i) Distinguished professor--\$50.

(ii) State health agency--\$50.

(iii) Visiting physician--\$0-.

(iv) Visiting professor--\$167.

(v) National Health Service Corps--\$0-.

(vi) Faculty temporary license (includes surcharges of \$280)--\$737.

(vii) Postgraduate Research Temporary License--\$0-.

~~[(viii) Medically underserved area--\$50.]~~

~~(viii) [(ix)] Regular--\$107.~~

(F) Licenses and Permits relating to Medical Education:

(i) Initial physician in training permit (includes surcharge of \$5)--\$202.

(ii) Physician in training permit for program transfer (includes surcharge of \$4)--\$131.

(iii) Evaluation or re-evaluation of postgraduate training program--\$250.

(iv) Physician in training permit for applicants performing rotations in Texas (includes surcharge of \$3)--\$120.

(2) Physician Assistants:

(A) Physician assistant license (includes surcharge of \$5)--\$205.

(B) Reissuance of license following revocation (includes surcharge of \$5)--\$205.

(C) Temporary license--\$107.

(3) Acupuncturists/Acudetox Specialists/Continuing Education Providers:

(A) Acupuncture licensure (includes surcharge of \$5)--\$305.

(B) Temporary license for an acupuncturist--\$107.

(C) Acupuncturist distinguished professor temporary license--\$50.

(D) Acudetox specialist certification (includes surcharge of \$2)--\$52.

(E) Continuing acupuncture education provider--\$50.

(F) Review of a continuing acupuncture education course--\$25.

(G) Review of continuing acudetox acupuncture education courses--\$50.

(4) Non-Certified Radiologic Technician permit (includes surcharge of \$2)--\$52.

(5) Non-Profit Health Organization initial certification--\$2,500.

(6) Surgical Assistants:

(A) Surgical assistant licensure--\$300.

(B) Temporary license--\$50.

(7) Criminal History Evaluation Letter--\$100.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904194

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016

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22 TAC §175.4

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The repeal is also authorized by §§53.105, 153.001, 155.105 Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§175.4. Application Forms.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904196

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016

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CHAPTER 179. INVESTIGATIONS

22 TAC §179.4

The Texas Medical Board (Board) proposes amendments to §179.4, concerning Investigations.

The amendment to §179.4, relating to Request for Information and Records from Physicians, sets out the procedure for requiring that, based on probable cause, an applicant or licensee submit to a physical or mental examination based on an order of the Board issued by the Executive Director.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to ensure that licensees undergo physical or mental examinations if probable cause exists.

Ms. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. The effect to individuals required to comply with the rule as proposed will be the cost of the required examination, which is determined by the individual evaluating psychiatrist. Based on historical information, the Board believes such cost may range from \$1,500 to \$3,500, depending on the evaluating psychiatrist used. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments

to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.056, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§179.4. Request for Information and Records from Physicians.

(a) - (b) (No change.)

(c) Impaired licensees.

(1) Pursuant to §164.056 of the Medical Practice Act, the Board is required to adopt guidelines to enable the Board to evaluate circumstances in which a physician or an applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(2) [(4)] A licensee shall report to the board if the licensee is aware of another licensee who poses a continuing threat to the public welfare because the said licensee is unable to practice medicine with reasonable skill and safety to patients because of illness; drunkenness; excessive use of drugs, narcotics, chemicals, or another substance; or a mental or physical condition.

(3) [(2)] If the board has probable cause to believe that a licensee is impaired, the board shall require a licensee to submit to a mental and/or physical examination by a physician or physicians designated by the board. Under the Act, an impaired licensee is considered to be one who is unable to practice within his field with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition. Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the board, that a certain licensee/applicant is impaired;

(B) a sworn statement from a representative of the Texas Medical Association's or the Texas Osteopathic Medical Association's impaired physician program, stating that the representative is willing to testify before the board that a certain licensee/applicant is impaired;

(C) evidence that a licensee/applicant left a treatment program for alcohol or chemical dependency before a completion of that program;

(D) evidence that a licensee/applicant has engaged in the intemperate use of drugs or alcohol at a time and under circumstances that would lead a reasonable person to believe that the licensee is impaired;

(E) evidence of repeated arrests of a licensee/applicant for intoxication or drug use;

(F) evidence of recurring temporary commitments to a mental institution of a licensee/applicant;

(G) medical records showing that a licensee/applicant has an illness or condition that results in the inability to function properly in his or her practice; or

(H) actions or statements by a licensee/applicant at a hearing conducted by the Board that gives the Board reason to believe that the licensee has an impairment.

(4) Upon presentation to the Executive Director of probable cause, the Board authorizes the Executive Director to write the licensee/applicant requesting that the licensee/applicant submit to a physical or mental examination within 30 days of the receipt of the letter from the Executive Director. The letter shall state the reasons for the request for the mental or physical examination, the physician or physicians the Executive Director has approved to conduct such examinations, and the date by which the examination and the results are to be received by the Board.

(5) If the licensee/applicant to whom a letter requiring a mental or physical examination is sent refuses to submit to the examination, the Board, through its Executive Director, shall issue an order requiring the licensee/applicant to show cause why the licensee/applicant should not be required to submit to the examination and shall schedule a hearing on the order not later than the 30 days after the date on which the notice of the hearing is provided to the licensee. The licensee/applicant shall be notified by either personal service or certified mail with return receipt requested.

(6) At the show cause hearing provided in for in paragraph (5) of this subsection, a panel of the Board's representatives shall determine whether the licensee/applicant shall submit to an evaluation or that the matter shall be closed with no examination required.

(A) At the hearing, the licensee/applicant and the licensee/applicant's attorney, if any, are entitled to present testimony and other evidence showing that the licensee/applicant should not be required to submit to the examination.

(B) If, after consideration of the evidence presented at the show cause hearing, the panel determines that the licensee/applicant shall submit to an examination, the Board's representatives shall, through its Executive Director, issue an order requiring the examination within 60 days after the date of the entry of the order requiring examination. A licensee is entitled to cross-examine an expert who offers testimony at hearing before the Board.

(C) If the panel determines that no such examination is necessary, the panel will withdraw the request for examination.

(D) The results of any Board-ordered mental or physical examination are confidential shall be presented to the Board under seal for it to take whatever action is deemed necessary and appropriate based on the results of the mental or physical examination. A licensee shall be provided the results of an examination and given the opportunity to provide a response at least 30 days before the Board takes action.

(7) In fulfilling its obligations under §164.056 of the Act, the Board shall refer the licensee/applicant to the most appropriate medical specialist for evaluation. The Board may not require a licensee/applicant to submit to an examination by a physician having a specialty specified by the Board unless medically indicated. The Board may not require a licensee/applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the licensee/applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(8) The guidelines adopted under this subsection do not impair or remove the Board's power to make an independent licensing or disciplinary decision unless a temporary suspension is convened.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904197

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) proposes amendments to §§187.25 - 187.27 and 187.37, concerning Procedural Rules.

The amendment to §187.25, relating to Notice of Adjudicative Hearing, modifies the required content of notice of adjudicative hearings to be consistent with State Office of Administrative Hearings(SOAH) rules and establishes that default judgments may be granted due to a party's failure to appear at a hearing upon a remand of the case at SOAH back to the Board.

The amendments to §187.26, relating to Service in SOAH Proceedings, establishes the distinction between notices of adjudicative hearings and notice of complaints at the State Office of Administrative Hearings and that remand to the Board of a SOAH case prevents conflicting jurisdiction.

The amendments to §187.27, relating to Written Answers in Proceedings and Default Orders, provide that a written answer to a complaint filed at SOAH is to be in response to service of the complaint and not to the Notice of Adjudicative Hearings, and clarify the process for obtaining Determinations of Defaults.

The amendment to §187.37, relating to Final Decisions and Orders, clarify that sanctions are determined and issued by the Board.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing §§187.25, 187.26 and 187.27, will be to provide consistency with SOAH rules and create better efficiency; as a result of enforcing §187.37, will be to ensure that the Board determines appropriate sanctions for violations related to a licensee's professional practice.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

22 TAC §§187.25 - 187.27

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §164.001 and §164.006, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§187.25. Notice of Adjudicative Hearing.

(a) Notice. Before revoking or suspending any license, denying an application for a license, or reprimanding any licensee, the board will afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than ten days, except as otherwise provided by board rule or the Act.

(b) Content.

(1) In accordance with §2001.052 of the APA, notice of adjudicative hearing shall include:

(A) a statement of time, place, and nature of the hearing;

(B) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) a reference to the particular sections of the statutes and rules involved;

(D) a short and plain statement of the matters asserted; and[-]

(E) a disclosure in at least 12-point bold face type that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing.

[(2) In addition, the Notice of Adjudicative Hearing shall include a notice that failure to answer or appear may result in a default order. The notice shall include the following language in at least 10-point bold type: "If you do not file a written answer to this notice with the State Office of Administrative Hearings within 20 days after the date this Notice of Adjudicative Hearing was mailed, a default order may be entered against you, which may include the denial of licensure or any or all of the requested sanctions, including the revocation of your license. If you file a written answer, but then fail to attend the hearing, a default order may be entered against you, which may include the denial of licensure or any or all of the requested sanctions, including the revocation of your license. A copy of any response you file with the State Office of Administrative Hearings shall also be provided to the hearings coordinator of the Texas State Board of Medical Examiners."]

(2) [(3)] A copy of the original pleading filed with the board may be substituted for subsection (b)(1) [and (b)(2)] of this section to the extent that it contains the required information.

(c) Service. The notice of adjudicative hearing shall be served as specified in §187.26(a) of this title (relating to Service in SOAH Proceedings).

§187.26. Service in SOAH Proceedings.

(a) Service of a notice of adjudicative hearing [and Complaint] shall be made by hand delivery, regular, registered or certified mail, courier service, or otherwise in accordance with the APA and the Rules of SOAH. The notice of adjudicative hearing shall be delivered to the respondent at the address of record on file with the board. [A certificate of service indicating service]

(b) Service in the manner provided for subsection (a) of this section [in this subsection] shall be prima facie evidence of proper service of notice of adjudicative hearing.

(1) Service by hand delivery shall be complete upon hand delivery to the respondent or respondent's agent at the respondent's address of record.

(2) Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(3) Service by courier service shall be complete upon deposit of the paper, enclosed in a properly addressed wrapper, in a depository under the care and custody of a courier service, with payment under a contract with the board.

(c) Service of the Complaint--On the same date the Complaint is filed at SOAH, it shall be served on each party or the party's representative in compliance with SOAH Rule 1 TAC §155.103(a) - (d) (relating to Service Documents on Parties). In addition, the Complaint shall include the following in 12-point bold face type: "If you do not file a written answer to this Complaint with the State Office of Administrative Hearings within 20 days after the date of receipt, a default order may be entered against you, which may include the denial of licensure or any or all of the requested sanctions, including the revocation of your license. A copy of any answer you file with the State Office of Administrative Hearings shall also be provided to the hearings coordinator of the Texas Medical Board."

(d) [(b)] Service of other documents in contested cases pending before SOAH shall be governed by the rules of SOAH.

§187.27. Written Answers in SOAH Proceedings and Default Orders.

(a) Written Answers in SOAH Proceedings. As authorized by SOAH rules, [- TAC §155.55(f) (relating to Rules of Procedures);] a respondent is required to file a written answer to the Complaint within[- in accordance with the following:-]

[(4)] [Within] 20 days after the date that service of the [a notice of adjudicative proceeding and] Complaint is complete, as provided in §187.26(b) of this title (relating [related] to Service in SOAH Proceedings), the respondent shall file a written answer with the State Office of Administrative Hearings and with the Hearings Coordinator of the board.

[(2) Upon the filing of a Notice of Adjudicative Hearing, the Hearings Coordinator for the board shall calculate the date that a written answer must be filed.]

(b) Default Orders.

(1) If no written answer has been filed within 20 days after the date of service, the board attorney assigned to the matter [Hearings Coordinator] shall present the administrative record of the case to the General [Hearings] Counsel for the board, including the Complaint [and the notice of adjudicative hearing]. The General [Hearings] Counsel shall determine whether the Complaint [notice] was properly served.

(2) In the event the General [Hearings] Counsel determines that the Complaint [notice of adjudicative hearing] was properly served and that respondent has failed to timely file a written answer, as required by subsection (a)[(4)] of this section, the General [Hearings] Counsel shall issue a Determination of Default, which shall be served on respondent and filed at SOAH. The Determination of Default shall specifically state the facts on which the General [Hearings] Counsel has based the Determination of Default, [request that the matter be abated or continued at SOAH pending informal disposition by the board] and

summarize the requirements by which a Determination of Default or Default Order may be set aside, as provided in paragraphs (4) - (7) of this subsection. At the time of the issuing of the Determination of Default by the General Counsel, the Board Staff attorney shall file a motion with SOAH requesting that the matter be remanded to the Board to allow consideration of the Determination of Default, and serve the motion on respondent.

(3) An answer received after a Determination of Default has been issued shall not be filed.

(4) In the event that the respondent wishes to file an answer after a Determination of Default has been issued, but before a Default Order has been adopted by the board, the respondent must file a Motion to Set Aside the Determination of Default, which shall show the board that:

(A) the failure to timely file a written answer was not intentional or the result of conscious indifference but was due to a mistake or accident;

(B) respondent has a meritorious defense; and

(C) the setting aside of the Determination of Default will not cause any delay or injury to the board.

(5) The board shall consider the Complaint, the Determination of Default, and any Motion to Set Aside the Determination of Default, at a meeting of the board not less than twenty days after the date of the Determination of Default. If the board concurs with the findings in the Determination of Default, the board may deem the allegations in the Complaint as true and enter a Default Order.

(6) In the event that the respondent wishes to file an answer after a Default Order has been entered by the board, but before the time for filing a Motion for Rehearing has expired, the respondent must file a Motion for Rehearing to Set Aside Default Order, which shall show that:

(A) the failure to timely file a written answer was caused by fraud, accident, or wrongful act or official mistake of the board;

(B) the failure to timely file a written answer was not the result of respondent's fault or negligence; and

(C) the respondent has a meritorious defense.

(7) The Motion for Rehearing shall be supported by affidavits and documentary evidence that present a prima facie case for a meritorious defense.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904198

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

22 TAC §187.37

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.001 and §164.006, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§187.37. Final Decisions and Orders.

(a) Board action. A copy of the final decision or order shall be delivered or mailed to any party and to the attorney of record.

(b) Recorded. All final decisions and orders of the board shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Imminent peril. If the board finds that imminent peril to the public's health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) Changes to findings of fact and conclusions of law.

(1) Reasons to Change Findings of Fact and Conclusions of Law. The board is charged by the legislature to protect the public interest, is an independent agency of the executive branch of the government of the State of Texas, and is the primary means of licensing, regulating and disciplining physicians and surgeons, physician assistants, and acupuncturists. Therefore, to ensure that sound medical principles govern the decisions of the board, it is the policy of the board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ only when the board determines:

(A) that the ALJ did not properly apply or interpret applicable law, board rules, written policies, or prior administrative decisions;

(B) that a prior administrative decision on which the ALJ relied is incorrect or should be changed; or[;]

(C) that a technical error in a finding of fact should be changed.

(2) Recommendations regarding the appropriate sanction. Section 164.007(a) requires that, after receiving the ALJ's findings of fact and conclusions of law, the board shall determine the charges on the merits. The board interprets this requirement as imposing on the board the responsibility of assessing the proper sanction. The board determination regarding appropriate sanctions shall be based on the ALJ's findings of fact and conclusions of law as set out in the Proposal for Decision. ~~[While the board welcomes the recommendations of ALJs regarding the appropriate sanction, the board does not consider the findings of fact and conclusions of law to be appropriate for stating such recommendations. Therefore, sanction recommendations in the form of findings of fact and conclusions of law are considered to be an improper application of applicable law and these rules.]~~

(3) Changes Stated in Final Order. If the board modifies, amends, or changes the ALJ's proposed findings of fact or conclusions of law, an order shall be prepared reflecting the specific reason and legal basis for each change made.

(e) Administrative finality. A final order or board decision is administratively final:

(1) upon a finding of imminent peril to the public's health, safety or welfare, as outlined in subsection (c) of this section;

(2) when no motion for rehearing has been filed within 20 days after the date the final order or board decision is entered; or

(3) when a timely motion for rehearing is filed and the motion for rehearing is denied by board order or operation of law as outlined in §187.38 of this title (relating to Motions for Rehearing).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904199

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) proposes amendments to §190.2 and §190.14, concerning Disciplinary Guidelines.

The amendment to §190.2, relating to Board's Role, removes language that invites recommendations from administrative law judges regarding sanctions on cases held at the State Office of Administrative Hearings.

The amendment to §190.14, relating to Disciplinary Sanction Guidelines, corrects a citation relating to violations of Board rules.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to ensure and clarify that the Board is responsible for determining appropriate sanctions for violations related to a licensee's professional practice and to clarify the Board's rules.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §190.2

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of

medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.001, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§190.2. Board's Role.

The board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Medical Practice Act. [~~The board welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the board is not bound by such recommendations.~~] A sanction should be consistent with sanctions imposed in other similar cases and should reflect the board's determination of the seriousness of the violation and the sanction required to deter future violations. A determination of the appropriate sanction is reserved to the board. The appropriate sanction is not a proper finding of fact or conclusion of law. This chapter shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the Act's provisions related to methods of discipline and administrative penalties. This chapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904200

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.001, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§190.14. Disciplinary Sanction Guidelines.

These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act (Act). The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) - (6) (No change.)

(7) The following standard sanctions shall apply to violations of the Act:

(A) Failure to timely provide copies of medical or billing records upon written request or overcharging for medical records is an administrative violation.

(i) Violation of:

(I) Section 159.006 - information furnished by licensee; and

(II) Section ~~164.051(a)(3)~~ [164.052(a)(2)] - violation of Board Rule, to wit: §165.2 (relating to Medical Record Release and Charges).

(ii) Standard Sanction: administrative penalty of \$1,000 per violation.

(B) - (X) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 22, 2009.

TRD-200904229

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES AND PAIN MANAGEMENT CLINICS

22 TAC §§192.1, 192.4 - 192.7

The Texas Medical Board (Board) proposes amendments to §§192.1, 192.4, 192.5, and 192.6 and new §192.7, concerning Office-Based Anesthesia Services.

The amendment to §192.1, relating to Definitions, amends the definition of "anesthesia services" so that it is consistent with §162.102 of the Texas Occupations Code and defines "pain management clinic" pursuant to Senate Bill 911 passed by the 81st Legislature.

The amendment to §192.4, relating to Registration, establishes requirements for the certification of pain management clinics starting on September 1, 2010.

The amendment to §192.5, relating to Inspections, establishes the grounds on which the Texas Medical Board will inspect pain management clinics.

The amendment to §192.6, relating to Requests for Inspection and Advisory Opinion, clarifies that advisory opinions may be given in relation to office-based anesthesia services.

New §192.7, relating to Operation of Pain Management Clinics, sets out the requirements for the operation, staffing of personnel, standards of care, and patient billing procedures for pain management clinics that are subject to the Board's authority.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed

are in effect the public benefit anticipated as a result of enforcing §192.1 and §192.5, will be to establish rules related to the certification of pain management clinics to ensure quality of patient care and to establish personnel requirements for the clinics; as a result of enforcing §192.4, will be to establish by rule the deadline for obtaining certification of pain management clinics to ensure quality of patient care and to establish personnel requirements for the clinics; as a result of enforcing §192.6 and §192.7, will be to establish rules related to obtaining advisory opinions related to the operation of pain management clinics to ensure quality of patient care and to establish personnel requirements for the clinics.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments and new section are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments and new section are also authorized by §167.001 et.seq., Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§192.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents indicate otherwise.

(1) ACLS--Advanced Cardiac Life Support, as defined by the AHA.

(2) AED--Automatic External Defibrillator.

(3) AHA--American Heart Association.

(4) Analgesics--Dangerous or scheduled drugs that alleviate pain.

(5) Anesthesia--The loss of feeling or sensation resulting from the use of dangerous or scheduled drugs to depress nerve function. Anesthetics are scheduled or dangerous drugs used to induce anesthesia.

(6) Anesthesia Services--The use of dangerous and scheduled drugs, including anesthetics, analgesics, and anxiolytics, for the performance of Level I - IV services [to permit the performance of surgery or other painful medical procedures].

(7) Anxiolytics--Dangerous or scheduled drugs used to treat episodes of anxiety.

(8) Anesthesiologist assistant--A graduate of an approved anesthesiologist assistant training program.

(9) Anesthesiology resident--A physician who is presently in an approved Texas anesthesiology residency program who is either licensed as a physician in Texas or holds a postgraduate resident permit issued by the Texas Medical Board.

(10) BCLS--Basic Cardiac Life Support, as defined by the AHA.

(11) Certified registered nurse anesthetist--A person licensed by the Texas Board of Nursing (TBN) [~~Board of Nurse Examiners for the State of Texas (BNE)~~] as a registered professional nurse, authorized by the TBN [~~BNE~~] as an advanced practice nurse in the role of nurse anesthetist, and certified by a national certifying body recognized by the TBN [~~BNE~~].

(12) Dangerous drugs--medications defined by the Texas Dangerous Drug Act, Chapter 483, Texas Health and Safety Code. Dangerous drugs require a prescription, but are not included in the list of scheduled drugs. A dangerous drug bears the legend "Caution: federal law prohibits dispensing without a prescription" or "Prescription Only."

(13) Level I services--delivery of analgesics or anxiolytics by mouth, as prescribed for the patient on order of a physician, at a dose level low enough to allow the patient to remain ambulatory.

(14) Level II services--delivery of analgesics or anxiolytics by mouth in dosages greater than allowed at Level I and ~~tumescent~~ anesthesia, as prescribed for the patient on order of a physician.

(15) Level III services--delivery of analgesics or anxiolytics other than by mouth, including intravenously, intramuscularly, or rectally.

(16) Level IV services--delivery of general anesthetics, including regional anesthetics and monitored anesthesia care.

(17) Monitored anesthesia care--Situations where a patient undergoing a diagnostic or therapeutic procedure receives doses of medication that create a risk of loss of normal protective reflexes or loss of consciousness and the patient remains able to protect the airway during the procedure. If the patient is rendered unconscious and loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.

(18) Outpatient setting--Any facility, clinic, center, office, or other setting that is not a part of a licensed hospital or a licensed ambulatory surgical center with the exception of all of the following listed in subparagraphs (A) - (D) of this paragraph:

(A) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. §[~~(~~]479-1 or as listed under a successor federal statute or regulation;

(B) a facility maintained or operated by a state or governmental entity;

(C) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(D) an outpatient setting accredited by either the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers, the American Association for the Accreditation of Ambulatory Surgery Facilities, or the Accreditation Association for Ambulatory Health Care.

(19) Board--The Texas Medical Board.

(20) PALS--Pediatric Advanced Life Support, as defined by the AHA.

(21) Pain management clinic--A publicly or privately owned facility for which a majority of patients are issued on a monthly

basis, a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone.

(22) [~~(21)~~] Physician--A person licensed by the Texas Medical Board as a medical doctor or doctor of osteopathic medicine who diagnoses, treats, or offers to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or effects cures thereof and charges therefor, directly or indirectly, money or other compensation. "Physician" and "surgeon" shall be construed as synonymous.

(23) [~~(22)~~] Scheduled Drugs--medications defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code. This Act establishes five categories, or schedules of drugs, based on risk of abuse and addiction. (Schedule I includes drugs that carry an extremely high risk of abuse and addiction and have no legitimate medical use. Schedule V includes drugs that have the lowest abuse/addiction risk).

§192.4. Registration and Certification.

(a) Office-Based Anesthesia. Each physician who provides anesthesia services or performs a procedure for which anesthesia services are provided in an outpatient setting shall register with the board on a form prescribed by the board and pay a fee to the board in an amount established by the board.

(b) Pain Management Clinics.

(1) Application for Certification. Effective September 1, 2010, a pain management clinic may not operate in Texas without obtaining a certificate from the board. Each physician who owns or operates a pain management clinic shall submit an application on a form prescribed by the board. Certificates issued pursuant to this subsection are not transferable or assignable. Only the primary physician owner shall be required to register with the board if there is more than one physician owner of the clinic.

(2) Eligibility for Certification.

(A) The owner or operator of a pain management clinic, an employee of the clinic, or a person with whom a clinic contracts for services may not:

(i) have been denied, by any jurisdiction, a license issued by the Drug Enforcement Agency or a state public safety agency under which the person may prescribe, dispense, administer, supply, or sell a controlled substance;

(ii) have held a license issued by the Drug Enforcement Agency or a state public safety agency in any jurisdiction, under which the person may prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or

(iii) have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(B) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(i) an offense that constitutes a felony; or

(ii) an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined by Texas Occupations Code Annotated §551.003(11).

(3) Expiration of Certificate.

(A) Certificates shall be valid for two years.

(B) Certificate holders shall have a 180-day grace period from the expiration date to renew the certificate, however, the owner or operator of the clinic may not continue to operate the clinic while the permit is expired.

(4) Certificate Renewal. Certificates must be timely renewed. If a certificate is not renewed before the expiration of the grace period, the certificate will be automatically cancelled and the owner or operator of the clinic must reapply for original certification.

(c) ~~[(b)]~~ The board shall coordinate the registration required under this section with the registration required under the Medical Practice Act, Texas Occupations Code Chapter 156, so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.

§192.5. Inspections.

(a) The board may conduct inspections to enforce these rules, including inspections of an office site and a pain management clinic and of documents of a physician's practice ~~[that relate to the provision of anesthesia services in an outpatient setting]~~. The board may contract with another state agency or qualified person to conduct these inspections.

(b) Unless it would jeopardize an ongoing investigation, the board shall provide at least five business days' notice before conducting an on-site inspection under this section.

(c) This section does not require the board to make an on-site inspection of a physician's office.

(d) The board shall conduct inspections of pain management clinics if the board suspects that the ownership or physician supervision is not in compliance with board rule.

§192.6. Requests for Inspection and Advisory Opinion.

(a) The board may consider a request by a physician for an on-site inspection offering office-based anesthesia. The board may, in its discretion and on payment of a fee in an amount established by the board, conduct the inspection and issue an advisory opinion.

(b) An advisory opinion issued by the board under this section is not binding on the board, and the board, except as provided by subsection (c) of this section, may take any action under the Medical Practice Act, in relation to the situation addressed by the advisory opinion that the board considers appropriate.

(c) A physician who requests and relies on an advisory opinion of the board may use the opinion as mitigating evidence in an action or proceeding to impose an administrative or civil penalty under the Medical Practice Act. The board or court, as appropriate, shall take proof of reliance on an advisory opinion into consideration and mitigate the imposition of administrative or civil penalties accordingly.

§192.7. Operation of Pain Management Clinics.

(a) Purpose. The purpose of these rules is to identify the roles and responsibilities of physicians that own pain management clinics and to provide the minimum acceptable standards for such clinics.

(b) Exemptions. The rules promulgated under this title do not apply to the following settings:

(1) a medical or dental school or an outpatient clinics associated with a medical or dental school;

(2) a hospital, including any outpatient facility or clinic of a hospital;

(3) a hospice established under 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Services) or defined by 42 CFR §418.3;

(4) a facility maintained or operated by this state;

(5) a clinic maintained or operated by the United States;

(6) a nonprofit health organization certified by the board under Chapter 177 of this title (relating to Certification of Non-Profit Health Organizations);

(7) a clinic owned or operated by a physician who treats patients within the physician's area of specialty who uses other forms or treatment, including surgery, with the issuance of a prescription for a majority of the patients; or

(8) a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse's area of specialty and uses other forms of treatment with the issuance of a prescription for a majority of the patients.

(c) Ownership. A pain management clinic may not operate in Texas unless the clinic is owned and operated by a medical director who is a physician who practices in Texas and has an unrestricted medical license and hold a certificate as described in §192.4(b) of this title (relating to Registration and Certification).

(d) Operation of Clinic. The medical director of a pain management clinic must operate the clinic in compliance with Drug Prevention and Control Act, 21 U.S.C.A. 801 et seq. and the Texas Controlled Substances Act, Chapter 481 of the Texas Health and Safety Code, relating to the prescribing and dispensing of controlled substances.

(e) Personnel Requirements. The medical director of a pain management clinic must, on an annual basis, ensure that all personnel are properly licensed, if applicable, trained including 10 hours of continuing medical education related to pain management, and qualified for employment consistent with §192.4(b)(2)(A) of this title.

(f) Standards to Ensure Quality of Patient Care. The medical director of a pain management clinic shall:

(1) be on-site at the clinic at least 33 percent of the clinic's total number of operating hours;

(2) review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic;

(3) establish protocols consistent with Chapter 170 of this title (relating to Pain Management); and

(4) establish quality assurance procedures.

(g) Patient Billing Procedures.

(1) The medical director of a pain management clinic must ensure that adequate billing records are maintained for all patients and made available to the Texas Medical Board, upon request. Billing records shall include the amount paid, method of payment, and description of services.

(2) Billing records shall be maintained for seven years from the date of last treatment of the patient.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904201

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.6, §193.7

The Texas Medical Board (Board) proposes amendments to §193.6 and §193.7, concerning Standing Delegation Orders.

The amendment to §193.6, relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses, reflects changes passed during the 81st Legislative Session under Senate Bill No. 532. Specifically, the amendments change requirements relating to primary, alternate and facility-based practice sites; the number of nurse midwives and physician assistants to whom delegation in relation to obstetrical services is appropriate; registration requirements related to prescriptive delegation; and grounds for obtaining waivers regarding supervision and prescription delegation.

The amendment to §193.7, relating to Delegated Drug Therapy Management, based on Senate Bill No. 381 passed by the 81st Legislature, permits physicians to delegate to pharmacists at hospitals, hospital-based clinics, and academic institutions the management of a patient's drug therapy treatment under certain conditions.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to provide greater access to care by allowing physicians greater ability to delegate to midlevel health professionals and to provide greater access to care by allowing physicians greater ability to delegate to pharmacists to manage drug therapies for patients.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §§157.101, 157.0511, 157.053, 157.054, 157.0541, 157.0542, 157.059, Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§193.6. Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses.

(a) Purpose. The purpose of this section is to provide guidelines for implementation of the Medical Practice Act ("the Act"), Texas Occupations Code Annotated, §§157.051 - 157.060, which provide for the use by physicians of standing delegation orders, standing medical orders, physician's orders, or other orders or protocols in delegating authority to physician assistants or advanced practice nurses at a site serving medically underserved populations, at a physician's primary practice or alternate practice site, or at a facility-based practice site. This section establishes minimum standards for supervision by physicians when delegating prescriptive authority to physician assistants and advanced practice nurses at such sites. This section also provides for the signing of a prescription by an advanced practice nurse or a physician assistant after the person has been designated by the delegating physician as a person delegated to sign a prescription which may be carried out by a physician assistant or advanced practice nurse according to protocols. Such protocols may authorize diagnosis of the patient's condition and treatment, including prescription of dangerous drugs or controlled substances Schedules III - V as provided under subsection (n) of this section. Proper use of protocols allows integration of clinical data gathered by the physician assistant or advanced practice nurse. Neither the Act, §§157.051 - 157.060, nor these rules authorize the exercise of independent medical judgment by physician assistants or advanced practice nurses, and the delegating physician remains responsible to the board and to his or her patients for acts performed under the physician's delegated authority. Advanced practice nurses and physician assistants remain professionally responsible for acts performed under the scope and authority of their own licenses.

(b) Delegation of prescriptive authority at site serving underserved populations.

(1) Acts that may be delegated. At a site serving a medically underserved population, a physician authorized by the board may delegate to a physician assistant or an advanced practice nurse the act or acts of administering, providing, or carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and controlled substances Schedules III - V as provided under subsection (n) of this section, and shall comply with other applicable laws.

(2) Physician supervision at site serving medically underserved populations. Physician supervision of a physician assistant or an advanced practice nurse at a site serving a medically underserved population will be adequate if a delegating physician:

(A) receives a daily status report to be conveyed in person, by telephone, or by radio from the advanced practice nurse or physician assistant on any complications or problems encountered that are not covered by a protocol;

(B) visits the clinic in person at least once every ten business days during regular business hours during which the advanced practice nurse or physician assistant is on site providing care, in order to observe and provide medical direction and consultation to include, but not be limited to:

(i) reviewing with the physician assistant or advanced practice nurse the case histories of patients with problems or complications encountered;

(ii) personally diagnosing or treating patients requiring physician follow-up; and

(iii) verifying that patient care is provided by the clinic in accordance with a written quality assurance plan on file at the clinic, which includes a random review and countersignature of at least 10% of the patient charts by the physician;

(C) is available by telephone or direct telecommunication for consultation, assistance with medical emergencies, or patient referrals; and

(D) is responsible for the formulation or approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically reviews such orders and the services provided to patients under such orders.

(3) Supervision of clinics. A physician may not supervise more than three clinics serving medically underserved populations without approval of the board. A physician may not supervise any number of clinics with combined regular business hours exceeding 150 concurrent hours per week without approval of the board.

(c) Delegation of prescriptive authority at primary practice site.

(1) "Primary practice site" means:

(A) the practice location where the physician spends the majority of the physician's time;

(B) a licensed hospital, long-term care facility, or adult care center where both the physician and the physician assistant or advanced practice nurse are authorized to practice;

(C) a clinic operated by or for the benefit of a public school district for the purpose of providing care to the students of that district and the siblings of those students, if consent to treatment at that clinic is obtained in a manner that complies with the Family Code, Chapter 32;

(D) an established patient's residence; ~~or~~

(E) where the physician is physically present with the physician assistant or advanced practice nurse; ~~or~~[-]

(F) a location where a physician assistant or advanced practice nurse who practices on-site with the physician more than 50 percent of the time and provides:

(i) health care services for established patients;

(ii) without remuneration, voluntary charity health care services at a clinic run or sponsored by a nonprofit organization; or

(iii) without remuneration, voluntary health care services during a declared emergency or disaster at a temporary facility operated or sponsored by a governmental entity or nonprofit organization and established to serve persons in Texas.

(2) Acts that may be delegated. At a physician's primary practice site, a licensed physician authorized by the board may delegate to a physician assistant or an advanced practice nurse acting under adequate physician supervision the act or acts of administering, providing, carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing

and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and controlled substances Schedules III - V as provided in subsection (n) of this section, and shall comply with other applicable laws.

(3) Physician supervision. Physician supervision of the carrying out and signing of prescription drug orders shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

(4) Additional limitations. A physician's authority to delegate the carrying out or signing of a prescription drug order under this subsection is limited to:

(A) ~~four~~ three physician assistants or advanced practice nurses or their full-time equivalents practicing at the physician's primary or alternate practice site, unless a waiver is granted under subsection (i) of this section; and

(B) the patients with whom the physician has established or will establish a physician-patient relationship, but this shall not be construed as requiring the physician to see the patient within a specific period of time.

(d) Delegation of prescriptive authority at a physician's alternate practice site.

(1) "Alternate practice site" means a site:

(A) where services similar to the services provided at the delegating physician's primary practice site are provided; and

(B) located within 75 ~~60~~ miles of the delegating physician's residence or primary practice site.

(2) Acts that may be delegated. At a physician's alternate practice site, a licensed physician authorized by the board may delegate to a physician assistant or an advanced practice nurse acting under adequate physician supervision the act or acts of administering, providing, carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing, carrying out or signing a prescription drug order under this subsection is limited to dangerous drugs and controlled substances Schedules III - V as provided in subsection (n) of this section, and shall comply with other applicable laws.

(3) Physician supervision is adequate for the purposes of this subsection if the delegating physician:

(A) is on-site with the advanced practice nurse or physician assistant at least 10 ~~20~~ percent of the hours of operation of the site each month that the physician assistant or advanced practice nurse is acting with delegated prescriptive authority and is available while on-site to see, diagnose, treat, and provide care to those patients for services provided to or to be provided by the physician assistant or advanced practice nurse to whom the physician has delegated prescriptive authority ~~[time]~~;

(B) randomly reviews at least 10 percent of the medical charts, including through electronic review of the charts from a remote location, of patients seen by a physician assistant or advanced practice nurse at the site; ~~and~~

(C) is available through direct telecommunication for consultation, patient referral, or assistance with a medical emergency; ~~and~~[-]

(D) is not prohibited by contract from seeing, diagnosing, or treating a patient for services provided or to be provided by the physician assistant or advanced practice nurse under delegated prescriptive authority.

(4) A physician may not delegate to a combined number of more than four [three] physician assistants or advanced practice nurses or their full-time equivalents at the physician's primary and alternate practice sites, unless a waiver is granted under subsection (i) of this section.

(e) Delegation of prescriptive authority at a facility-based practice site.

(1) Acts that may be delegated. A licensed physician authorized by the board shall be authorized to delegate, to one or more physician assistants or advanced practice nurses acting under adequate physician supervision whose practice is facility based at a licensed hospital or licensed long-term care facility, the carrying out or signing of prescription drug orders if the physician is the medical director or chief of medical staff of the facility in which the physician assistant or advanced practice nurse practices, the chair of the facility's credentialing committee, a department chair of a facility department in which the physician assistant or advanced practice nurse practices, or a physician who consents to the request of the medical director or chief of medical staff to delegate the carrying out or signing of prescription drug orders at the facility in which the physician assistant or advanced practice nurse practices. Providing and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and controlled substances Schedules III - V as provided in subsection (n) of this section, and shall comply with other applicable laws.

(2) Limitations on authority to delegate. A physician's authority to delegate under this subsection is limited as follows:

(A) the delegation is pursuant to a physician's order, standing medical order, standing delegation order, or other order or protocol developed in accordance with policies approved by the facility's medical staff or a committee thereof as provided in facility bylaws;

(B) the delegation occurs in the facility in which the physician is the medical director, the chief of medical staff, the chair of the credentialing committee, or a department chair;

(C) the delegation does not permit the carrying out or signing of prescription drug orders for the care or treatment of the patients of any other physician without the prior consent of that physician;

(D) delegation in a long-term care facility must be by the medical director and the medical director is limited to delegating the carrying out and signing of prescription drug orders to no more than four [three] advanced practice nurses or physician assistants or their full-time equivalents; and

(E) under this section, a physician may not delegate at more than one licensed hospital or more than two long-term care facilities unless approved by the board.

(3) Physician supervision. Physician supervision of the carrying out and signing of a prescription drug order shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

(f) Documentation of supervision.

(1) A physician shall document any delegation of prescriptive authority to a physician assistant or advanced practice nurse by a

protocol, as defined in this section. The physician shall also maintain a permanent record of all protocols the physician has signed, showing to whom the delegation was made and the dates of the original delegation, each annual review, and termination.

(2) If the physician assistant or advanced practice nurse is located at a site other than the site where the physician spends the majority of the physician's time, physician supervision shall be further documented by a permanent record showing the names or identification numbers of patients discussed during the daily status reports, the times when the physician is on site, and a summary of what the physician did while on site. The summary shall include a description of the quality assurance activities conducted and the names of any patients seen or whose case histories were reviewed with the physician assistant or advanced practice nurse. The supervising physician shall sign the documentation at the conclusion of each site visit. Documentation is not required if the physician assistant or advanced practice nurse is permanently located with the physician at a site where the physician spends the majority of the physician's time.

(3) Physicians that delegate the carrying out or signing of a prescription drug order must register with the board the name and license number of the physician assistant or advanced practice nurse to whom the delegation is made.

(g) Alternate physicians. If a delegating physician will be unavailable to supervise the physician assistant or advanced practice nurse as required by this section, arrangements shall be made for another physician to provide that supervision. The alternate (substitute) physician providing that supervision shall affirm in writing and document through a permanent record where the physician assistant or advanced practice nurse is located that he or she is familiar with the protocols or standing delegation orders in use and is accountable for adequately supervising prescriptive delegation provided pursuant to those protocols or standing delegation orders. The permanent record shall be kept with the protocols or standing orders. The permanent record shall contain dates of the alternate physician supervision and be signed by the alternate physician acknowledging this responsibility. The physician assistant or advanced practice nurse is responsible for verifying that the alternate physician is a licensed Texas physician holding an unrestricted and active license.

(h) Prescription forms. Prescription forms shall comply with applicable rules adopted by the Texas State Board of Pharmacy. Prescriptions issued pursuant to this section may only be written for dangerous drugs and controlled substances Schedules III - V as provided in subsection (n) of this section. A delegating physician is responsible for devising and enforcing a system to account for and monitor the issuance of prescriptions under the physician's supervision.

(i) Waivers.

(1) The board may waive or modify any of the site or supervision requirements for a physician to delegate the carrying out or signing of prescription drug orders to an advanced practice nurse or physician assistant at facilities serving medically underserved populations, at physician primary and alternate practice sites, and at facility-based practice sites.

(2) The board may grant a waiver under paragraph (1) of this subsection if the board determines that:

(A) the practice site where the physician is seeking to delegate prescriptive authority is unable to meet the requirements of Chapter 157 of the Act or this section, or compliance would cause an undue burden without a corresponding benefit to patient care;

(B) safeguards exist for patient care and for fostering a collaborative practice between the physician and the advanced practice nurses and physician assistants; and

(C) if the requirement for which the waiver is sought is the amount of time the physician is on-site, the frequency and duration of time the physician is on-site when the advanced practice nurse or physician assistant is present is sufficient for collaboration to occur, taking into consideration the other ways the physician collaborates with the advanced practice nurse or physician assistant at other sites.

(3) If the board determines that the types of health care services provided by a physician assistant or advanced practice nurse at an alternate practice site as described in subsection (d) of this section are limited in nature and duration and are within the scope of delegated authority, and that patient health care will not be adversely affected, the board may modify or waive:

(A) the limitation on the number of physician assistants or advanced practice nurses, or their full-time equivalents, if the board does not authorize more than six physician assistants or advanced practice nurses or their full-time equivalents;

(B) the mileage limitation; or

(C) the onsite-supervision requirements, except that the physician must be available on-site at regular intervals and when on-site must be available to treat patients.

(4) ~~[(3)]~~ The board may not waive the limitation on the number of primary or alternate practice sites at which a physician may delegate the carrying out or signing of prescription drug orders or the number of advanced practice nurses or physician assistants to whom a physician may delegate the carrying out or signing of prescription drug orders, except as provided in paragraph (3)(A) of this subsection.

(5) [(4)] Procedure.

(A) A physician may apply for a waiver by submitting a written request to the licensure division of the board via the agency website, email, or regular mail. The request shall then be submitted to the board for review.

(B) The Standing Orders Committee of the board shall review requests for waivers and may recommend to the full board that a waiver be granted, denied or modified.

(C) The board may grant a waiver only if the board determines good cause exists to grant a waiver.

(D) The board may approve a waiver with modifications.

(E) If the board denies a waiver, a written explanation for the denial shall be given to the physician along with any recommended modifications that would make the waiver application acceptable.

(F) The board may revoke, suspend or modify a waiver previously granted after providing the physician notice and opportunity for a hearing as provided for by the Administrative Procedure Act and Chapter 187 of this title (relating to Procedural Rules).

(6) A modification or waiver granted under this subsection may not validate or authorize a contract provision that prohibits a physician from seeing, diagnosing, or treating any patient.

(j) Violations. Violation of this section by the delegating physician may result in a refusal to approve supervision or the cancellation of the physician's authority to delegate to a physician assistant or an advanced practice nurse under this section. Violation of this section may also subject the physician to disciplinary action as provided by

the Act, §164.001, for violation of §164.051. If an advanced practice nurse violates this section or the Act, §§157.051 - 157.060, the board shall promptly notify the Texas Board of Nurse Examiners of the alleged violation. If a physician assistant violates this section or the Act, §§157.051 - 157.060, the board shall promptly notify the Texas Physician Assistant [State] Board [of Physician Assistant Examiners].

(k) Delegation to certified registered nurse anesthetists.

(1) In a licensed hospital or ambulatory surgical center a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for a certified registered nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician. The physician's order for anesthesia or anesthesia-related services does not have to be drug-specific, dose-specific, or administration-technique-specific. Pursuant to the order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the appropriate medical devices necessary to accomplish the order and maintain the patient within a sound physiological status.

(2) This paragraph shall be liberally construed to permit the full use of safe and effective medication orders to utilize the skills and services of certified registered nurse anesthetists.

(l) Delegation related to obstetrical services.

(1) A physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice nurse recognized by the Texas State Board of Nurse Examiners as a nurse midwife the act or acts of administering or providing controlled substances to the nurse midwife's or physician assistant's clients during intra-partum and immediate post-partum care. The physician shall not delegate the use of a prescription sticker or the use or issuance of an official prescription form relating to the prescription of Schedule II controlled substance as described under §481.075 of the Health and Safety Code.

(2) The delegation of authority to administer or provide controlled substances under this paragraph must be under a physician's order, medical order, standing delegation order, or protocol which shall require adequate and documented availability for access to medical care.

(3) The physician's orders, medical orders, standing delegation orders, or protocols shall provide for reporting or monitoring of client's progress including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

(4) The authority of a physician to delegate under this paragraph is limited to:

(A) four ~~three~~ nurse midwives or physician assistants or their full-time equivalents; and

(B) the designated facility at which the nurse midwife or physician assistant provides care.

(5) The administering or providing of controlled substances under this paragraph shall comply with other applicable laws.

(6) In this paragraph, "provide" means to supply one or more unit doses of a controlled substance for the immediate needs of a patient not to exceed 48 hours.

(7) The controlled substance shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws and shall include the patient's name and address; the drug to be provided; the name, address, and telephone number of the physi-

cian; the name, address, and telephone number of the nurse midwife or physician assistant; and the date.

(8) This paragraph does not permit the physician or nurse midwife or physician assistant to operate a retail pharmacy as defined under the Texas Pharmacy Act Texas Occupations Code Annotated Subtitle J.

(9) This paragraph shall be construed to provide a physician the authority to delegate the act or acts of administering or providing controlled substances to a nurse midwife or physician assistant but not as requiring physician delegation of further acts to a nurse midwife or as requiring physician delegation of the administration of medications to registered nurses or physician assistants other than as provided in this paragraph.

(10) This subsection does not limit the authority of a physician to delegate the carrying out or signing of a prescription drug order involving a controlled substance under subsection (n) of this section.

(m) Liability. A physician shall not be liable for the act or acts of a physician assistant or advanced practice nurse solely on the basis of having signed an order, a standing medical order, a standing delegation order, or other order or protocols authorizing a physician assistant or advanced practice nurse to perform the act or acts of administering, providing, carrying out, or signing a prescription drug order unless the physician has reason to believe the physician assistant or advanced practice nurse lacked the competency to perform the act or acts.

(n) Prescription Drug Orders.

(1) Pursuant to the Medical Practice Act, Tex. Occ. Code Ann. §157.0511, a physician's authority to delegate the carrying out or signing of a prescription drug order is limited to:

(A) dangerous drugs; and

(B) controlled substances to the extent provided in paragraph (2) of this subsection.

(2) A physician may delegate the carrying out or signing of a prescription drug order for a controlled substance only if:

(A) the prescription is for a controlled substance listed in ~~Schedule~~ Schedules III, IV, or V as established under Chapter 481 of the Texas Health and Safety Code;

(B) the prescription, including a refill of the prescription, is for a period not to exceed 90 ~~[30]~~ days;

(C) with regard to the refill of a prescription, the refill is authorized after consultation with the delegating physician and the consultation is noted in the patient's chart; and

(D) with regard to a prescription for a child less than two years of age, the prescription is made after consultation with the delegating physician and the consultation is noted in the patient's chart.

§193.7. *Delegated Drug Therapy Management.*

(a) Purpose. This section is promulgated to promote the efficient administration and regulation of the delegation by physicians to pharmacists of drug therapy management pursuant to the Medical Practice Act, Texas Occupations Code Annotated, §157.001 (related to Delegation of Certain Functions).

(b) Delegation. A physician licensed to practice medicine in Texas may delegate to a properly qualified and trained pharmacist acting under adequate supervision the performance of specific acts of drug therapy management authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol as provided for in this section.

(c) Drug therapy management. Drug therapy management is the performance of specific acts by pharmacists as authorized by a physician through written protocol. Drug therapy management does not include the selection of drug products not prescribed by the physician unless the drug product is named in the physician initiated protocol or the physician initiated record of deviation from a standing protocol. Drug therapy management may include the following listed in paragraphs (1) - (6) of this subsection:

(1) collecting and reviewing patient drug use histories;

(2) ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration;

(3) ordering drug therapy related laboratory tests;

(4) implementing or modifying drug therapy, including the authority to sign a prescription drug order for dangerous drugs as provided in §157.101(b-1) of the Act, following diagnosis, initial patient assessment, and ordering of drug therapy by a physician, as detailed in the protocol, provided that the pharmacist: [-]

(A) practices in a hospital, hospital-based clinic or an academic health care institution that has bylaws and a medical staff policy that permit a physician to delegate to a pharmacist the management of a patient's drug therapy;

(B) provides the name, address, and telephone number of the pharmacist and of the delegating physician on each prescription signed by the pharmacist; and

(C) the pharmacist provides a copy of the protocol to the Texas State Board of Pharmacy;

(5) generically equivalent drug selection if the physician's signature does not clearly indicate that the prescription must be dispensed as written; or

(6) any other drug therapy related act delegated by a physician.

(d) Supervision. Physician supervision shall be considered adequate for purposes of this section if the delegating physician is in compliance with this section and the physician:

(1) is responsible for the formulation or approval of the written protocol and any patient-specific deviation from the protocol and review of the written protocol and any patient-specific deviations from the protocol at least annually and the services provided to a patient under the protocol on a schedule defined in the written protocol;

(2) has established and maintains a physician-patient relationship with each patient provided drug therapy management by a delegated pharmacist and informed the patient that drug therapy will be managed by a pharmacist under written protocol;

(3) is geographically located so as to be able to be physically present daily to provide medical care and supervision;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problem or complication encountered;

(5) is available through direct telecommunication for consultation, assistance, and direction.

(e) Written protocol. Written protocols for purposes of this section shall mean a physician's order, standing medical order, standing delegation order, or other written order.

(1) A written protocol must contain at a minimum the following listed in subparagraphs (A) - (E) of this paragraph:

(A) a statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of drug therapy management;

(B) a statement identifying the individual pharmacist authorized to dispense drugs and to engage in drug therapy management as delegated by the physician;

(C) a statement identifying the types of drug therapy management decisions that the pharmacist is authorized to make which shall include:

(i) a statement of the ailments or diseases, drugs, and type of drug therapy management authorized; and

(ii) a specific statement of the procedures, decision criteria, or plan the pharmacist shall follow when exercising drug therapy management authority;

(D) a statement of the activities the pharmacist shall follow in the course of exercising drug therapy management authority, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made. Documentation shall be recorded within a reasonable time of each intervention and may be performed on the patient medication record, patient medical chart, or in a separate log book; and

(E) a statement that describes appropriate mechanisms and time schedule for the pharmacist to report to the physician monitoring the pharmacist's exercise of delegated drug therapy management and the results of the drug therapy management.

(2) A standard protocol may be used, or the attending physician may develop a drug therapy management protocol for the individual patient. If a standard protocol is used, the physician shall record, what deviations if any, from the standard protocol are ordered for that patient.

(f) Review and revision of protocols.

(1) At least annually, written protocols shall be reviewed by the physician and, if necessary, revised.

(2) Documentation of all services provided to the patient by the pharmacist shall be reviewed by the physician on the schedule established in the protocol.

(g) Construction and interpretation. This section shall not be construed or interpreted to restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols. This section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Texas Pharmacy Act, Texas Occupations Code Chapter 551.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904202

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



CHAPTER 194. NON-CERTIFIED RADIOLOGIC TECHNICIANS

22 TAC §§194.2, 194.3, 194.5

The Texas Medical Board (Board) proposes amendments to §§194.2, 194.3 and 194.5, concerning Non-Certified Radiologic Technicians.

The amendment to §194.2, relating to Definitions, updates citations for rules adopted by the Texas Department of State Health Services (DSHS) that relate to non-certified technicians.

The amendment to §194.3, relating to Registration, updates citations for rules adopted by DSHS that relate to non-certified technicians and provides that a person who operates a bone densitometry unit(s) which utilizes x-radiation is not required to obtain a hardship exemption as long as the person is not performing radiologic procedures other than bone densitometry.

The amendment to §194.5, relating to Non-Certified Technician's Scope of Practice, updates citations for rules adopted by DSHS that relate to non-certified technicians.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the rules will be to provide consistency with rules issued by DSHS.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by Chapter 601 of the Texas Occupations Code.

No other statutes, articles or codes are affected by the proposal.

§194.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The Texas Medical Board.

(2) Non-certified technician (NCT) or registrant--A person who is registered with the board and either:

(A) is listed on the current registry with the Texas Department of State Health Services and meets one of the following qualifications listed in clauses (i) and (ii) of this subparagraph;

(i) has completed a mandatory training program under 25 Texas Administrative Code, §140.518 [§143.17] (relating to Mandatory Training Programs for Non-Certified Technicians); or

(ii) if the person is licensed as a physician assistant in the State of Texas, has completed a mandatory training program under 25 Texas Administrative Code, §140.518 [§143.17] (relating to Mandatory Training Programs for Non-Certified Technicians) or has met the alternate training requirements under 25 Texas Administrative Code, §140.522 [§143.20] (relating to Alternate Training Requirements); or

(B) performs radiologic procedures for a physician to whom a hardship exemption was granted by the Texas Department of State Health Services within the previous year, as defined in 25 Texas Administrative Code, §140.520 [§143.19] (relating to Hardship Exemptions).

(3) Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic purposes.

§194.3. Registration.

(a) Any person in the State of Texas performing radiologic procedures, as defined in §194.5 of this title (relating to Non-Certified Technician's Scope of Practice), under the supervision of a current and active licensed Texas physician, must be registered with the Texas Medical Board. The physician must also be registered with the board to supervise the non-certified technician.

(b) This section does not apply to registered nurses or to persons certified by the Department of State Health Services under the Medical Radiologic Technologist Certification Act.

(c) An applicant shall apply for registration with the board on a form provided by the board and shall pay the appropriate fee established by the board. Each physician, who supervises a non-certified technician, shall apply on a separate application form.

(d) Applicants shall be 18 years of age or older and either:

(1) provide proof of the applicant's registry with the Texas Department of State Health Services and meet one of the following qualifications listed in subparagraphs (A) and (B) of this paragraph:

(A) receive training and instruction as required in 25 Texas Administrative Code, §140.518 [§143.17] (relating to Mandatory Training Programs for Non-Certified Technicians); or

(B) if licensed as a physician assistant, receive training and instruction as required in 25 Texas Administrative Code, §140.518 [§143.17] (relating to Mandatory Training Programs for Non-Certified Technicians) or meet the alternate training requirements in 25 Texas Administrative Code, §140.522 [§143.20] (relating to Alternate Training Requirements); or

(2) perform radiologic procedures for a physician to whom a hardship exemption was granted by the Texas Department of State Health Services within the previous year under 25 Texas Administrative Code, §140.520 [§143.19] (relating to Hardship Exemptions). A person who operates a bone densitometry unit(s) which utilizes x-radiation who is in compliance with 25 Texas Administrative Code §140.521 (relating to Bone Densitometry Training), however, is not required to obtain a hardship exemption as long as the person is not performing radiologic procedures other than bone densitometry.

§194.5. Non-Certified Technician's Scope of Practice.

(a) A registrant may only perform the following radiologic procedures, as listed in paragraphs (1) and (2) of this subsection unless otherwise expressly permitted by statute or rule:

(1) bone densitometry utilizing a dual energy x-ray densitometer; or

(2) chest, spine, extremities, abdomen, skull studies or other radiologic procedures utilizing standard film or film screen combinations and an x-ray tube that is stationary at the time of exposure; however, a registrant may not perform a procedure which has been identified as dangerous or hazardous by the Texas Department of State Health Services in 25 TAC §140.516 [§143.16] (Dangerous or Hazardous Procedures).

(b) A registrant, other than a physician assistant, shall perform all radiologic procedures under the direct supervision or instruction of a physician in the State of Texas.

(c) A supervising physician may not order, instruct, or direct a registrant to perform a radiologic procedure other than in compliance with applicable statutes and rules.

(d) All registrants must comply with the safety rules of the Texas Department of State Health Services relating to the control of radiation as set forth in 25 TAC Chapter 289 (relating to [the] Texas Regulations for the Control of Radiation) [25 TAC Chapter 289].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904203

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7016



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.65, §281.66

The Texas State Board of Pharmacy proposes amendments to §281.65, concerning Schedule of Administrative Penalties, and §281.66, concerning Application for Reissuance or Removal of Restrictions of a License or Registration. The amendments, if adopted, clarify that violating a contract with a program to aid impaired pharmacists or pharmacy students may result in an administrative penalty and that individuals applying for reinstatement or removal of restrictions may be required to submit fingerprints as required for criminal background checks.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there

will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure that individuals violating a contract with a program to aid impaired pharmacists or pharmacy students are appropriately disciplined and criminal background checks are completed for individuals applying for reinstatement or removal of restrictions of licenses or registrations. Individuals requesting reinstatement of their license or registration or removal of restrictions may be required to pay a fee to obtain a fingerprint background check. Currently, the fee is approximately \$45 and is paid to the Texas Department of Public Safety and Federal Bureau of Investigations. There is no fiscal impact for small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., November 6, 2009.

The amendments are proposed under §551.002, and §554.051, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.65. *Schedule of Administrative Penalties.*

The board has determined that the assessment of an administrative penalty promotes the intent of §551.002 of the Act. In disciplinary matters, the board may assess an administrative penalty in addition to any other disciplinary action in the circumstances and amounts as follows:

(1) The following violations by a pharmacist may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) - (L) (No change.)

(M) violating a disciplinary order of the Board or a contract under the program to aid impaired pharmacists or pharmacy students under Chapter 564 of the Act; [violating the reporting provisions of an Order of the Board:] \$500 - \$1,000;

(N) - (CC) (No change.)

(2) The following violations by a pharmacy may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) - (K) (No change.)

(L) violating a disciplinary order [the reporting provisions of an Order] of the Board: \$1,000 - \$5,000;

(M) - (BB) (No change.)

(3) The following violations by a pharmacy technician may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) - (C) (No change.)

(D) violating a disciplinary Order [the reporting provisions of an Order] of the Board: \$250 - \$500;

(E) - (K) (No change.)

(4) - (6) (No change.)

§281.66. *Application for Reissuance or Removal of Restrictions of a License or Registration.*

(a) A person whose pharmacy license, pharmacy technician registration, or license or registration to practice pharmacy has been canceled, revoked, or restricted, whether voluntary or by action of the board, may, after 12 months from the effective date of such cancellation, revocation, or restriction, apply to the board for reinstatement or removal of the restriction of the license or registration.

(1) (No change.)

(2) A person applying for reinstatement or removal of restrictions may be required to meet all requirements necessary in order for the board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs.

(3) [(2)] A person applying for reinstatement or removal of restrictions has the burden of proof.

(4) [(3)] On investigation and hearing, the board may in its discretion grant or deny the application or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant the modification.

(5) [(4)] If such application is denied by the board, a subsequent application may not be considered by the board until 12 months from the date of denial of the previous application.

(6) [(5)] The board in its discretion may require a person to pass an examination or examinations to reenter the practice of pharmacy.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904181

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-8037

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.8, §291.28

The Texas State Board of Pharmacy proposes amendments to §291.8, concerning Return of Prescription Drugs, and §291.28, concerning Patient Access to Confidential Records. The amendments if adopted, clarify that, the signature of a licensed health care professional is required on the inventory of drugs returned to a pharmacy from a penal institution; and clarify the require-

ments regarding the access to confidential patient records, increase the maximum fee to be charged for copying records from \$25 to \$50, allow a charge of up to \$50 for completing a survey or questionnaire, and change the title of the section to Access to Confidential Records.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that appropriate individuals are responsible for drug returned to a pharmacy. There may be an increase in costs to record service entities and attorneys requesting copies of pharmacy records. However, the Board is unable to determine the effect because pharmacies are not required to charge for providing the records.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., November 6, 2009.

The amendments are proposed under §551.002, §554.051, and §562.1085, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.1085 as authorizing the agency to adopt rules allowing a consultant pharmacist or licensed healthcare professional to return certain unused drugs from a healthcare facility or penal institution.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.8. Return of Prescription Drugs.

(a) (No change.)

(b) Return of prescription drugs from health care facilities.

(1) - (2) (No change.)

(3) Responsibilities. A licensed health care professional in a penal institution or a consultant pharmacist ~~[Consultant pharmacist/health care facility licensed health care professional/penal institution responsibilities. A consultant pharmacist or licensed health care professional]~~ may return to a pharmacy certain unused drugs, other than a controlled substance as defined by Chapter 481, Health and Safety Code, purchased from the pharmacy.

(A) (No change.)

(B) A healthcare facility or penal institution may not return any drug product that:

(i) - (iv) (No change.)

(C) The consultant pharmacist or [a] licensed health care professional in a penal institution shall be responsible for assuring an inventory of the drugs to be returned to a pharmacy is completed. The following information shall be included on this inventory:

(i) - (vii) (No change.)

(viii) signature of consultant pharmacist or licensed healthcare professional responsible for the administration of drugs in a penal institution.

(D) (No change.)

(4) - (5) (No change.)

§291.28. [Patient] Access to Confidential Records.

(a) Access to confidential records. A pharmacy shall comply with the request of a patient or a patient's agent to inspect or obtain a copy of the patient's confidential records maintained by the pharmacy, as defined in §551.003(10) of the Act. A pharmacy shall comply with all relevant state and federal laws regarding release of confidential records to third party requestors.

(b) Form of request. The pharmacy may require a patient or a patient's agent or any authorized third party to make requests for confidential records in writing, provided such a requirement has been communicated to the requestor ~~[patient or patient's agent]~~.

(c) Timely action by pharmacy. The pharmacy must respond to a request for confidential records in a timely manner.

(1) The pharmacy must respond to a request for confidential records no later than thirty days after receipt of the request by providing a copy of the records or, with the consent of the requestor ~~[patient or patient's agent]~~, a summary or explanation of such information. If the pharmacy is unable to take such action within thirty days of receiving the request, the pharmacy may extend the time for such action by no more than thirty days, provided that:

(A) the pharmacy provides the requestor ~~[patient]~~ with a written statement of the reasons for the delay and the date by which the pharmacy will respond to the request; and

(B) (No change.)

(2) The pharmacy must provide confidential records as requested ~~[by the patient or the patient's agent]~~ by either:

(A) (No change.)

(B) with the consent of the requestor ~~[at the patient's request,]~~ arranging for a convenient time and place for the individual to inspect or obtain a copy of the records.

(3) Access to confidential records may be expedited at the request of a ~~[the]~~ patient or a ~~[the]~~ patient's agent if there is a medical emergency. The pharmacy must respond to a request for expedited access to confidential records within 24 hours if the records are maintained at the pharmacy or within 72 hours if the records are stored off-site. The pharmacy may charge a reasonable fee, in addition to the fees outlined in subsection (d) of this section, of no more than \$25.00 for expediting a request for access to confidential records.

(d) Fees. The pharmacy may charge a reasonable, cost-based fee for providing a copy of confidential records or ~~[requested by a patient or a patient's agent or, with the consent of the patient or patient's agent,]~~ a summary or explanation of such information.

(1) A reasonable fee shall be a charge of no more than \$50.00 ~~[\$25.00]~~ for the first twenty pages and \$0.50 per page for every page thereafter. A reasonable fee shall include only the cost of:

(A) - (C) (No change.)

(2) (No change.)

(3) If an affidavit or questionnaire accompanies the request, the pharmacy may charge a reasonable fee of no more than \$50.00 to complete the written response.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904180

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-8037



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §§291.31, 291.33, 291.34

The Texas State Board of Pharmacy proposes amendments to §291.31, concerning Definitions, §291.33, concerning Operational Standards, and §291.34, concerning Records. The amendments, if adopted, implement the provisions of H.B. 19 passed during the 81st Regular Session of the Texas Legislature and require pharmacists to place a beyond use date on the prescription label in class A pharmacies; and implement the provisions of SB 381 as passed by the 81st Texas Legislature which amends Chapter 157 of the Medical Practices Act to allow a physician to delegate to a pharmacist the authority to implement or modify a patient's drug therapy under a protocol, including the authority to sign a prescription drug order for dangerous drugs.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that consumers are provided the beyond use date for their prescriptions and pharmacists are adequately supervised by physicians in order to implement or modify a patient's drug therapy. Pharmacies may have a programming cost to modify the pharmacy's system to print a beyond-use-date on the prescription label. The Board is unable to determine that cost because of the multitude of pharmacy software programs used by pharmacies.

A public hearing to receive comments on the proposed amendments will be held at 1:00 p.m. on Monday, November 9, 2009, at the Health Professions Council Board Room, William P. Hobby Building, 333 Guadalupe Street, Tower II, Room 225, Austin, Texas 78701. Persons planning to present comments to the Board are asked to provide a written copy of their comments prior to the hearing or bring 20 copies to the hearing. Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., November 6, 2009.

The amendments are proposed under §551.002, §554.051, §562.006, §562.0061, and §554.057 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code).

The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.006 and §562.0061 as authorizing the agency to adopt rules regarding the prescription label. The Board interprets §554.057 as authorizing the agency, with the advice of the Texas Medical Board, to adopt rules that allow a pharmacist to implement or modify a patient's drug therapy and sign prescriptions for dangerous drugs pursuant to a physician's delegation under §157.101(b-1).

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.31. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (34) (No change.)

(35) Practitioner--

(A) - (C) (No change.)

(D) an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders under §§157.0511, 157.052, 157.053, 157.054, 157.0541, or 157.0542, Occupations Code, or, for the purpose of this subchapter, a pharmacist who practices in a hospital, hospital-based clinic, or an academic health care institution and a physician has delegated the authority to sign a prescription for a dangerous drug under §157.101, Occupations Code.

(36) - (43) (No change.)

§291.33. Operational Standards.

(a) - (b) (No change.)

(c) Prescription dispensing and delivery.

(1) - (2) (No change.)

(3) Generic Substitution.

(A) - (B) (No change.)

(C) Dispensing directive.

(i) Written prescriptions.

(I) - (III) (No change.)

(IV) A [After, June 1, 2002, a] practitioner may prohibit substitution on a written prescription only by following the dispensing directive specified in this paragraph. Two-line prescription forms, check boxes, or other notations on an original prescription drug order which indicate "substitution instructions" are not valid methods to prohibit substitution, and a pharmacist may substitute on these types of written prescriptions.

~~{(V) A written prescription drug order issued prior to June 1, 2002, but presented for dispensing on or after June 1, 2002, shall follow the substitution instructions on the prescription.}~~

(ii) - (iv) (No change.)

(D) (No change.)

(4) - (6) (No change.)

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label in plain language and printed in an easily readable font size, unless otherwise specified, with at least the following information:

(i) - (xi) (No change.)

(xii) the name of the advanced practice nurse or physician assistant, if the prescription is carried out or signed by an advanced practice nurse or physician assistant in compliance with Subtitle B, Chapter 157, Occupations Code; ~~and~~

(xiii) the name of the pharmacist who signed the prescription for a dangerous drug under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code;

(xiv) ~~[(xiii)]~~ the name and strength of the actual drug product dispensed that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman, unless otherwise directed by the prescribing practitioner; ~~and~~[-]

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic name and name of the manufacturer or distributor of such generic drug. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label.)

(II) Except as provided in clause (xi) of this subparagraph, the brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(xv) if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacture, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication.

(B) - (C) (No change.)

(D) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) - (iv) (No change.)

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) - (-c-) (No change.)

(-d-) name of the patient; ~~and~~

(-e-) name of the prescribing practitioner and,

if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order; ~~and~~

(II) if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacture, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A be-

yond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) ~~[(H)]~~ sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(d) Equipment and supplies. Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

(1) data processing system including a printer ~~[typewriter]~~ or comparable equipment;

(2) - (6) (No change.)

(e) - (g) (No change.)

(h) Customized patient medication packages.

(1) - (2) (No change.)

(3) Label.

(A) The patient med-pak shall bear a label stating:

(i) - (ix) (No change.)

(x) the initials or an identification code of the dispensing pharmacist; ~~and~~

(xi) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacture, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xii) ~~[(xi)]~~ any other information, statements, or warnings required for any of the drug products contained therein.

(B) (No change.)

(C) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) - (iv) (No change.)

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) - (-c-) (No change.)

(-d-) name of the patient; ~~and~~

(-e-) name of the prescribing practitioner of each drug product and if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order; ~~and~~

(II) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacture, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) [(H)] for each drug product sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(4) - (7) (No change.)

(8) The patient med-pak label is not required to include the initials or identification code of the dispensing pharmacist specified in paragraph (3)(A) of this subsection if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(i) (No change.)

§291.34. *Records.*

(a) (No change.)

(b) Prescriptions.

(1) (No change.)

(2) Written prescription drug orders.

(A) - (C) (No change.)

(D) Prescription drug orders carried out or signed by an advanced practice nurse, [or] physician assistant, or pharmacist.

(i) A pharmacist may dispense a prescription drug order which is:

(I) carried out or signed by an advanced practice nurse or physician assistant provided the advanced practice nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code; and[-]

(II) for a dangerous drug and signed by a pharmacist under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code.

(ii) (No change.)

(E) (No change.)

(3) - (7) (No change.)

(c) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904179

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-8037



SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §§291.72 - 291.75

The Texas State Board of Pharmacy proposes amendments to §291.72, concerning Definitions, §291.73, concerning Personnel, §291.74, concerning Operational Standards, and §291.75,

concerning Records. The amendments, if adopted, will implement the provisions of H.B. 1924 as passed by the 81st Texas Legislature which establish a new definition for a rural hospital; add current rule language that outlines the procedures for a nurse to enter a pharmacy when the pharmacy is closed and remove drugs for administration to a patient to the Texas Pharmacy Act; and allow pharmacy technicians in a "rural hospital" to perform certain duties without the direct supervision of a pharmacists.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that patients receiving pharmacy services in rural hospitals are adequately protected. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

A public hearing to receive comments on the proposed amendments will be held at 1 pm on Monday, November 9, 2009, at the Health Professions Council Board Room, William P. Hobby Building, 333 Guadalupe Street, Tower II, Room 225, Austin, Texas 78701. Persons planning to present comments to the Board are asked to provide a written copy of their comments prior to the hearing or bring 20 copies to the hearing. Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, Fax (512) 305-8082. Comments must be received by 5 pm, November 6, 2009.

The amendments are proposed under §§551.002, 554.051, 562.006, and 562.0061 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.006 and §562.0061 as authorizing the agency to adopt rules regarding the prescription label.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.72. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (42) (No change.)

(43) Rural hospital--A licensed hospital with 75 beds or fewer that:

(A) is located in a county with a population of 50,000 or less; or

(B) has been designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(44) [(43)] Sample--A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(45) [(44)] Supervision--

(A) Physically present supervision--In a Class C pharmacy, a pharmacist shall be physically present to directly supervise pharmacy technicians or pharmacy technician trainees.

(B) Electronic supervision--In a Class C pharmacy in a facility licensed for 100 beds or less, a pharmacist licensed in Texas may electronically supervise pharmacy technicians or pharmacy technician trainees to perform the duties specified in §291.73(e)(2) of this title (relating to Personnel) provided:

(i) the pharmacy uses a system that monitors the data entry of medication orders and the filling of such orders by an electronic method that shall include the use of one or more the following types of technology:

(I) digital interactive video, audio, or data transmission;

(II) data transmission using computer imaging by way of still-image capture and store and forward; and

(III) other technology that facilitates access to pharmacy services;

(ii) the pharmacy establishes controls to protect the privacy and security of confidential records;

(iii) the pharmacist responsible for the duties performed by a pharmacy technician or pharmacy technician trainee verifies:

(I) the data entry; and

(II) the accuracy of the filled orders prior to release of the order; and

(iv) the pharmacy keeps permanent digital records of duties electronically supervised and data transmissions associated with electronically supervised duties for a period of two years.

(C) If the conditions of subparagraph (B) of this paragraph are met, electronic supervision shall be considered the equivalent of direct supervision for the purposes of the Act.

(46) [(45)] Texas Controlled Substances Act--The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(47) [(46)] Unit-dose packaging--The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(48) [(47)] Unusable drugs--Drugs or devices that are unusable for reasons, such as they are adulterated, misbranded, expired, defective, or recalled.

(49) [(48)] Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act Subtitle B, Chapter 157, Occupations Code.

§ 291.73. *Personnel.*

(a) (No change.)

(b) Pharmacist-in-charge.

(1) General.

(A) - (B) (No change.)

(C) A pharmacist-in-charge may be in charge of one facility with 101 beds or more and one facility with 100 beds or less,

including a rural hospital, provided the total number of beds does not exceed 150 beds.

(D) - (E) (No change.)

(2) (No change.)

(c) - (d) (No change.)

(e) Pharmacy technicians and pharmacy technician trainees.

(1) General. [All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).]

(A) All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) In addition to the training requirements specified in subparagraph (A) of this paragraph, pharmacy technicians performing the duties specified in paragraph (2)(C) of this subsection shall complete the following. Training on the:

(i) procedures for verification of the accuracy of actions performed by pharmacy technicians including required documentation.

(ii) duties which may and may not be performed by pharmacy technicians in the absence of a pharmacist; and

(iii) use and operation of a continuous quality improvement program designed to prevent dispensing/distribution errors.

(C) A pharmacy technician initially employed after June 1, 2011, who is performing the duties specified in paragraph (2)(C) of this section shall have completed a board-approved pharmacy technician training program specified in §305.2 of this title (relating to Pharmacy Technician Training Programs).

(2) Duties. Duties may include, but need not be limited to, the following functions under the supervision of and responsible to a pharmacist:

(A) (No change.)

(B) Facilities licensed for 100 beds or less.

(i) Physically present supervision. The following functions must be performed under the physically present supervision of a pharmacist unless the pharmacy meets the requirements for a rural hospital and has been approved by the board to allow pharmacy technicians to perform the duties specified in §552.1011 of the Texas Pharmacy Act (Act):

(I) - (IV) (No change.)

(ii) (No change.)

(C) Rural Hospitals.

(i) A rural hospital may allow a pharmacy technician to perform the duties specified in clause (ii) of this subparagraph when a pharmacist is not on duty, if:

(I) the pharmacy technician:

(-a-) is a registered pharmacy technician and not a pharmacy technician trainee; and

(-b-) meets the training requirements specified in §297.6 of this title and those specified in paragraph (1) of this subsection;

(II) a pharmacist is accessible at all times to respond to any questions and needs of the pharmacy technician or other hospital employees, by telephone, answering or paging service, e-mail, or any other system that makes a pharmacist immediately accessible;

(III) only one pharmacy technician is on duty at a time; and

(IV) a nurse or practitioner at the rural hospital or a pharmacist through electronic supervision as specified in paragraph (2) of this subsection, verifies the accuracy of the actions of the pharmacy technician.

(ii) If the requirements of clause (i) of this subparagraph are met, the pharmacy technician may, during the hours that the institutional pharmacy in the hospital is open, perform the following duties in the pharmacy without the direct supervision of a pharmacist:

(I) enter medication order and drug distribution information into a data processing system;

(II) prepare, package, or label a prescription drug according to a medication order if a licensed nurse or practitioner verifies the accuracy of the order before administration of the drug to the patient;

(III) fill a medication cart used in the rural hospital;

(IV) distribute routine orders for stock supplies to patient care areas; and

(V) access and restock automated medication supply cabinets.

(3) (No change.)

(f) - (g) (No change.)

§291.74. Operational Standards.

(a) Licensing requirements.

(1) - (13) (No change.)

(14) A Class C (Institutional) pharmacy that proposes to allow a pharmacy technician to perform the duties specified in §562.1011 of the Act shall make application to the board as follows.

(A) The pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:

(i) name, address, and pharmacy license number;

(ii) name and license number of the pharmacist-in-charge;

(iii) name and registration number of the pharmacy technicians;

(iv) proposed date the pharmacy wishes to start allowing pharmacy technicians to perform the duties specified in §562.1011 of the Act;

(v) documentation that the hospital is a rural hospital as specified in §562.1011 of the Act and §291.72 of this title (relating to Definitions); and

(vi) any other information specified on the application.

(B) The pharmacy may not allow a pharmacy technician to perform the duties specified in §562.1011 of the Act, until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(C) Every two years in conjunction with the application for renewal of the pharmacy license, the pharmacy shall provide updated documentation that the hospital is a rural hospital as specified in subparagraph (A)(v) of this paragraph.

(b) - (d) (No change.)

(e) Absence of a pharmacist.

(1) - (2) (No change.)

(3) Rural hospitals. In rural hospitals when a pharmacy technician performs the duties listed in §291.73(e)(2)(C) of this title (relating to Personnel), the following is applicable:

(A) the pharmacy technician shall make a record of all drugs distributed from the pharmacy. The record shall contain the following information:

(i) name of patient or location where floor stock is distributed;

(ii) name of device or drug, strength, and dosage form;

(iii) dose prescribed or ordered;

(iv) quantity distributed;

(v) time and date of the distribution; and

(vi) signature (first initial and last name or full signature) or electronic signature of nurse or practitioner that verified the actions of the pharmacy technician.

(B) The original or direct copy of the medication order may substitute for the record specified in subparagraph (A) of this paragraph, provided the medication order meets all the requirements of subparagraph (A) of this paragraph.

(C) The pharmacist shall verify all distributions made from the pharmacy in the absence of a pharmacist and for medication orders perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than seven (7) days from the time of such distribution. The pharmacy shall maintain a record of the verification of all distributions made from the pharmacy in the absence of a pharmacist. For medication orders, such verification shall include a drug regimen review of the orders including any discrepancies noted by the pharmacist.

(D) The pharmacist-in-charge shall develop and implement continuous quality improvement program for the purpose of evaluating the quality of pharmacy services or the competence of personnel and suggest improvements in pharmacy systems to enhance patient care. The continuous quality improvement program shall include a peer review process as specified in Subchapter B, Chapter 564, Occupations Code. The following is applicable for the peer review process.

(i) The peer review committee shall be composed of the pharmacist-in-charge, the pharmacy technician, a nurse or practitioner responsible for verifying the actions of the pharmacy technician. The peer review committee shall meet at least quarterly and shall:

(I) review incident reports of errors;

(II) determine the cause of the error;

(III) make recommendations to correct the problem that caused the error; and

(IV) monitor the changes to determine if the changes have improved the operation of the pharmacy and reduced errors.

(ii) The peer review committee shall maintain a record of all meetings of the peer review committee. Such record shall include the following information:

(I) date of meeting;

(II) location of meeting;

(III) names of persons attending the meeting; and

(IV) description of activities of the committee which may include the following:

(-a-) discussion of any problems in the pharmacy's operation (e.g., work flow, dispensing/distribution process);

(-b-) findings of the committee regarding errors;

(-c-) description of recommendations of the committee; and

(-d-) review of actions or changes relating to individuals, systems, or processes that were made as a result of previous recommendations.

(iii) All proceedings and records of a pharmacy peer review committee are confidential as specified in §564.103 of the Act.

(iv) A hospital's medical peer review committee may perform the functions of the peer review committee as specified in this subparagraph if the committee includes the individuals listed in clause (i) of this subparagraph.

(f) Drugs.

(1) - (4) (No change.)

(5) Distribution.

(A) (No change.)

(B) Procedures.

(i) (No change.)

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I) - (XXXIII) (No change.)

(XXXIV) duties and education and training of professional and nonprofessional staff; ~~and~~

(XXXV) operation of the pharmacy when a pharmacist is not on-site;

(XXXVI) for rural hospitals, continuous quality improvement program that includes peer review; and

(XXXVII) [~~(XXXV)~~] emergency preparedness plan, to include continuity of patient therapy and public safety.

(6) (No change.)

(g) - (j) (No change.)

§291.75. *Records.*

(a) - (b) (No change.)

(c) Patient records.

(1) - (5) (No change.)

(6) General requirements for records maintained in a data processing system.

(A) - (B) (No change.)

(C) Change or discontinuance of a data processing system.

(i) Records of distribution and return for all controlled substances ~~and~~ nalbuphine (e.g., Nubain) ~~and carisoprodol (e.g., Soma)~~. A pharmacy that changes or discontinues use of a data processing system must:

(I) - (II) (No change.)

(ii) - (iii) (No change.)

(D) (No change.)

(7) Data processing system maintenance of records for the distribution and return of all controlled substances, ~~and~~ nalbuphine (e.g., Nubain) ~~and carisoprodol (e.g., Soma)~~ to the pharmacy.

(A) Each time a controlled substance, ~~or~~ nalbuphine (e.g., Nubain) ~~or carisoprodol (e.g., Soma)~~ is distributed from or returned to the pharmacy, a record of such distribution or return shall be entered into the data processing system.

(B) - (D) (No change.)

(8) - (9) (No change.)

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904183

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-8037



SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy proposes amendments to §291.104, concerning Operational Standards. The amendments if adopted, implement the provisions of H.B. 19 passed during the 81st Regular Session of the Texas Legislature and require pharmacists to place a beyond use date on the prescription label in Class E pharmacies.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that consumers are provided the beyond use date for their prescriptions. Pharmacies may have a programming cost to modify the pharmacy's system to print a beyond-use-date on the prescription label. The Board is unable to determine that cost because of the multitude of pharmacy software programs used by pharmacies.

A public hearing to receive comments on the proposed amendments will be held at 1:00 p.m. on Monday, November 9, 2009, at the Health Professions Council Board Room, William P. Hobby Building, 333 Guadalupe Street, Tower II, Room 225, Austin, Texas 78701. Persons planning to present comments to the Board are asked to provide a written copy of their comments prior to the hearing or bring 20 copies to the hearing. Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 pm, November 6, 2009.

The amendments are proposed under §§551.002, 554.051, 562.006, and 562.0061 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.006 and §562.0061 as authorizing the agency to adopt rules regarding the prescription label.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.104. *Operational Standards.*

- (a) (No change.)
- (b) Prescription dispensing and delivery.
 - (1) General.
 - (A) - (C) (No change.)

(D) All pharmacists ~~[Pharmacists]~~ shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(E) - (F) (No change.)

(2) - (3) (No change.)

(4) Labeling. At the time of delivery, the dispensing container shall bear a label that contains the following information: ~~[with the name, physical address, and phone number of the pharmacy and comply with the pharmacy or drug laws or rules in the state in which the pharmacy is located.]~~

(A) the name, physical address, and phone number of the pharmacy,

(B) if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacture, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(C) any other information that is required by the pharmacy or drug laws or rules in the state in which the pharmacy is located.

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904178

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-8037



SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy proposes amendments to §291.133, concerning Pharmacies Compounding Sterile Preparations. The amendments if adopted, adopted amendments to the USP, Chapter 797 Pharmaceutical Compounding--Sterile Preparations that became effective on June 1, 2008. The amendments are suggestions from the Task Force on Class C Pharmacies.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure the safety of sterile preparations compounded in pharmacies. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, Fax (512) 305-8082. Comments must be received by 5 pm, November 6, 2009.

The amendments are proposed under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.133. *Pharmacies Compounding Sterile Preparations.*

(a) (No change.)

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (15) (No change.)

(16) Compounding Aseptic Containment Isolator--A compounding aseptic isolator designed to provide worker protection from exposure to undesirable levels of airborne drug throughout the compounding and material transfer processes and to provide an aseptic environment for compounding sterile preparations. Air exchange with the surrounding environment should not occur unless the air is first passed through a microbial retentive filter (HEPA minimum) system capable of containing airborne concentrations of the physical size and state of the drug being compounded. Where volatile hazardous drugs are prepared, the exhaust air from the isolator should be appropriately removed by properly designed building ventilation.

(17) ~~(46)~~ Critical Area--A critical area is an ISO Class 5 environment.

(18) ~~(47)~~ Critical Sites--Sterile ingredients of compounded sterile preparations and locations on devices and components used to prepare, package, and transfer compounded sterile preparations that provide opportunity for exposure to contamination.

(19) ~~(48)~~ Cytotoxic--A pharmaceutical that has the capability of killing living cells.

(20) ~~(49)~~ Device--An instrument, apparatus, implement, machine, contrivance, implant, in-vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(21) Direct Compounding Area--A critical area within the ISO Class 5 primary engineering control where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

(22) ~~(20)~~ Disinfectant--A disinfectant is an agent that frees from infection, usually a chemical agent but sometimes a physical one, and that destroys disease-causing pathogens or other harmful microorganisms but may not kill bacterial spores. It refers to substances applied to inanimate objects.

(23) First Air--The air exiting the HEPA filter in a unidirectional air stream that is essentially particle free.

(24) ~~(21)~~ Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(25) ~~(22)~~ HVAC--Heating, ventilation, and air conditioning.

(26) ~~(23)~~ Immediate use--A sterile preparation that is not prepared according to USP 797 standards (i.e. outside the pharmacy and most likely not by pharmacy personnel) which shall be stored for no longer than one hour after completion of the preparation.

(27) ~~(24)~~ IPA--Isopropyl alcohol (2-propanol).

(28) ~~(25)~~ Media-Fill Test--A media-fill test is used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as Soybean--Casein Digest Medium is substituted for the actual drug product to simulate admixture compounding. The issues to consider in the development of a media-fill test are the following: media-fill procedures, media selection, fill volume, incubation, time and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

(29) ~~(26)~~ Multiple-Dose Container--A multiple-unit container for articles or preparations intended for potential administration only and usually contains antimicrobial preservatives. The beyond-use date for an opened or entered (e.g., needle-punctured) multiple-dose

container with antimicrobial preservatives is 28 days, unless otherwise specified by the manufacturer.

(30) ~~(27)~~ Negative Pressure Room--A room that is at a lower pressure compared to adjacent spaces and, therefore, the net flow of air is into the room.

(31) ~~(28)~~ Office use--The administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy in accordance with Chapter 562 of the Act, or for administration or provision by a veterinarian in accordance with §563.054 of the Act.

(32) ~~(29)~~ Pharmacy Bulk Package--A container of a sterile preparation for potential use that contains many single doses. The contents are intended for use in a pharmacy admixture program and are restricted to the preparation of admixtures for infusion or, through a sterile transfer device, for the filling of empty sterile syringes. The closure shall be penetrated only one time after constitution with a suitable sterile transfer device or dispensing set, which allows measured dispensing of the contents. The pharmacy bulk package is to be used only in a suitable work area such as a laminar flow hood (or an equivalent clean air compounding area).

(33) ~~(30)~~ Repackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original container into unit dose packaging or a multiple dose container for distribution within a facility licensed as a Class C pharmacy or to other pharmacies under common ownership for distribution within those facilities. The term as defined does not prohibit the repackaging of drug products for use within other pharmacy classes.

(34) ~~(31)~~ Preparation or Compounded Sterile Preparation--A sterile admixture compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber.

(35) ~~(32)~~ Primary Engineering Control--A device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding sterile preparations. Such devices include, but may not be limited to, laminar airflow workbenches, biological safety cabinets, and compounding aseptic isolators and compounding aseptic containment isolators.

(36) ~~(33)~~ Product--A product is a commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the U.S. Food and Drug Administration (FDA). Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

(37) ~~(34)~~ Positive Control--A quality assurance sample prepared to test positive for microbial growth.

(38) ~~(35)~~ Positive Pressure Room--A room that is at a higher pressure compared to adjacent spaces and, therefore, the net air flow is out of the room.

(39) ~~(36)~~ Quality assurance--The set of activities used to ensure that the process used in the preparation of sterile drug preparations lead to preparations that meet predetermined standards of quality.

(40) ~~(37)~~ Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final compounded sterile preparations prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(41) ~~[(38)]~~ Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(42) Segregated Compounding Area--A designated space, either a demarcated area or room, that is restricted to preparing low-risk level compounded sterile preparations with 12-hour or less beyond-use date. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of compounded sterile preparations and shall be void of activities and materials that are extraneous to sterile compounding.

(43) ~~[(39)]~~ Single-dose container--A container intended for a single use, other than single-dose vials and single-dose large volume potential solutions. Examples of single-dose containers include pre-filled syringes, cartridges, and fusion-sealed containers without preservatives.

(44) ~~[(40)]~~ Single-dose vial--A vial intended for a single use. Exceptions to this definition would be single dose vials routinely used to compound total potential nutrition (TPN) preparations (e.g., sodium chloride, sodium acetate, sodium phosphate, potassium chloride, potassium acetate, potassium phosphate, calcium gluconate, magnesium sulfate, multivitamin for injection, multi-trace elements, ascorbic acid, folic acid, heparin, phytonadione, l-carnitine, cysteine, selenium, injectable zinc).

(45) ~~[(41)]~~ Single-dose large volume parenteral solution--Large volume parenteral solutions (i.e., containers of solution of at least 1000 mL) routinely used for compounding sterile TPN preparations or for batch compounding (e.g., sterile water for injection (SWFI); 5%, 10%, and 70% dextrose in SWFI; 0.9% sodium chloride; 0.45% sodium chloride; 5% dextrose/0.9% sodium chloride; 5% dextrose/0.45% sodium chloride).

(46) ~~[(42)]~~ SOPs--Standard operating procedures.

(47) ~~[(43)]~~ Terminal Sterilization--The application of a lethal process, e.g., steam under pressure or autoclaving, to sealed final preparation containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10⁻⁶, i.e., or a probability of less than one in one million of a non-sterile unit.

(48) Unidirectional Flow--An airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

(49) ~~[(44)]~~ USP/NF--The current edition of the United States Pharmacopoeia/National Formulary.

(c) (No change.)

(d) Operational Standards.

(1) (No change.)

(2) Microbial Contamination Risk Levels. Risk Levels for sterile compounded preparations shall be as outlined in Chapter 797,

Pharmacy Compounding--Sterile Preparations of the USP/NF and as listed below.

(A) (No change.)

(B) Low-Risk Level compounded sterile preparations with 12-hour or less beyond-use date. Low-risk level compounded sterile preparations are those compounded pursuant to a physician's order for a specific patient under all of the following conditions.

(i) The compounded sterile preparations are compounded in compounding aseptic isolator or compounding aseptic containment isolator that does not meet the requirements described in paragraph (5)(A)(ii)(I) of this subsection relating to Low and Medium Risk Preparations or the compounded sterile preparations are compounded in laminar airflow workbench or a biological safety cabinet that cannot be located within an ISO Class 7 buffer area.

(ii) The primary engineering control device is located in a segregated compounding area restricted to sterile compounding activities that minimizes the risk of contamination of the compounded sterile preparation.

(iii) The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors, or that is adjacent to construction sites, warehouses, or food preparation.

(iv) For a low-risk preparation compounded as described in clauses (i) - (iii) of this subparagraph, administration of such compounded sterile preparations must commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less.

(C) ~~[(B)]~~ Medium-risk level compounded sterile preparations.

(i) Medium-Risk Conditions. Medium-risk level compounded sterile preparations, are those compounded aseptically under low-risk conditions and one or more of the following conditions exists.

(I) Multiple individual or small doses of sterile products are combined or pooled to prepare a compounded sterile preparation that will be administered either to multiple patients or to one patient on multiple occasions.

(II) The compounding process includes complex aseptic manipulations other than the single-volume transfer.

(III) The compounding process requires unusually long duration, such as that required to complete the dissolution or homogenous mixing (e.g., reconstitution of intravenous immunoglobulin or other intravenous protein products).

(IV) The compounded sterile preparations do not contain broad spectrum bacteriostatic substances and they are administered over several days (e.g., an externally worn infusion device).

(V) For a medium-risk preparation, in the absence of direct sterility testing results or appropriate information sources that justify different limits the beyond use dates may not exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 30 hours at controlled room temperature, for not more than 9 [7] days at a cold temperature, and for 45 days in solid frozen state at minus 20 degrees Celsius or colder.

(ii) Examples of medium-risk compounding. Examples of medium-risk compounding include the following.

(I) Compounding of total parenteral nutrition fluids using a manual or automated device during which there are multiple injections, detachments, and attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container.

(II) Filling of reservoirs of injection and infusion devices with multiple sterile drug products and evacuations of air from those reservoirs before the filled device is dispensed.

(III) Filling of reservoirs of injection and infusion devices with volumes of sterile drug solutions that will be administered over several days at ambient temperatures between 25 and 40 degrees Celsius (77 and 104 degrees Fahrenheit).

(IV) Transfer of volumes from multiple ampuls or vials into a single, final sterile container or product.

(D) [(C)] High-risk level compounded sterile preparations.

(i) High-risk Conditions. High-risk level compounded sterile preparations are those compounded under any of the following conditions.

(I) Non-sterile ingredients, including manufactured products are incorporated or a non-sterile device is employed before terminal sterilization.

(II) Sterile ingredients, components, devices, and mixtures are exposed to air quality inferior to ISO Class 5. This includes storage in environments inferior to ISO Class 5 of opened or partially used packages of manufactured sterile products that lack antimicrobial preservatives.

(III) Non-sterile preparations are exposed no more than 6 hours before being sterilized.

(IV) It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or compendial specifications in unopened or in opened packages of bulk ingredients.

(V) For a high-risk preparation, in the absence of direct sterility testing results or appropriate information sources that justify different limits, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 24 hours at controlled room temperature, for not more than 3 days at a cold temperature, and for 45 days in solid frozen state at minus 20 degrees or colder.

(VI) All non-sterile measuring, mixing, and purifying equipment is rinsed thoroughly with sterile, pyrogen-free water, and then thoroughly drained or dried immediately before use for high-risk compounding while assuring cleanliness. All high-risk compounded sterile aqueous solutions subjected to terminal sterilization are passed through a filter with a nominal porosity not larger than 1.2 micron preceding or during filling into their final containers to remove particulate matter. Sterilization of high-risk level compounded sterile preparations by filtration shall be performed entirely within an ISO Class 5 or superior air quality environment.

(ii) Examples of high-risk compounding. Examples of high-risk compounding include the following.

(I) Dissolving non-sterile bulk drug powders to make solutions, which will be terminally sterilized.

(II) Exposing the sterile ingredients and components used to prepare and package compounded sterile preparations to room air quality worse than ISO Class 5.

(III) Measuring and mixing sterile ingredients in non-sterile devices before sterilization is performed.

(IV) Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least 95% by weight of their active chemical moiety and have not been contaminated or adulterated between uses.

(3) Immediate Use Compounded Sterile Preparations. For the purpose of emergency or immediate patient care, such situations may include cardiopulmonary resuscitation, emergency room treatment, preparation of diagnostic agents, or critical therapy where the preparation of the compounded sterile preparation under low-risk level conditions would subject the patient to additional risk due to delays in therapy. Compounded [~~compounded~~] sterile preparations are exempted from the requirements described in this paragraph for low-risk, medium-risk, and high-risk level compounded sterile preparations when all of the following criteria are met.

(A) - (F) (No change.)

(4) (No change.)

(5) Environment. Compounding facilities shall be physically designed and environmentally controlled to minimize airborne contamination of critical sites.

(A) Low and Medium Risk Preparations.

(i) A pharmacy that prepares low- and medium-risk preparations shall have a clean room/controlled area for the compounding of sterile preparations that is constructed to minimize the opportunities for particulate and microbial contamination. The clean room/controlled area shall:

(I) be clean, well lit, and of sufficient size to support sterile compounding activities;

(II) be used only for the compounding of sterile preparations;

(III) be designed such that hand sanitizing and gowning occurs outside the buffer area but allows hands-free access by compounding personnel to the buffer room/area;

(IV) have non-porous and washable floors or floor covering to enable regular disinfection;

(V) be ventilated in a manner to avoid disruption from the HVAC system and room cross-drafts;

(VI) have walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices (e.g., coved), nonshedding and resistant to damage by disinfectant agents.

(VII) have junctures of ceilings to walls coved or caulked to avoid cracks and crevices;

(VIII) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(IX) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles shall not be brought into the controlled area;

(X) contain an anteroom/ante-zone that provides at least an ISO class 8 air quality and may contain a sink that enables

hands-free use with a closed system of soap dispensing to minimize the risk of extrinsic contamination; and

(XI) contain a buffer zone or buffer room designed to maintain at least ISO Class 7 conditions. The following is applicable for the buffer area.

(-a-) There shall be some demarcation designation that delineates the anteroom or area from the buffer area. The demarcation shall be such that it does not create conditions that could adversely affect the cleanliness of the area.

(-b-) The buffer area shall be segregated from surrounding, unclassified spaces to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the filtered unidirectional airflow environment, and this segregation should be continuously monitored.

(-c-) A buffer zone that is not physically separated from the anteroom shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(-d-) The buffer area shall not contain sources of water (i.e., sinks) or floor drains.

(ii) The pharmacy shall prepare sterile pharmaceuticals in a primary engineering control device, such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator, compounding aseptic containment isolator which is capable of maintaining at least ISO Class 5 conditions during normal activity.

(I) The primary engineering control shall:

(-a-) be located in the buffer area or room and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system.

(-b-) be certified by an independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months and when it is relocated, in accordance with the manufacturer's specifications; and

(-c-) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented.

(II) The compounding aseptic isolator or compounding aseptic containment isolator must be placed in an ISO Class 7 buffer area unless the isolator meets all of the following conditions.

(-a-) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(-c-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(B) High-risk Preparations. In addition to the requirements in subparagraph (A) of this paragraph, when high-risk preparations are compounded, the primary engineering control shall be located in a buffer room that provides a physical separation, through the use of walls, doors and pass-throughs and has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(C) Automated compounding device. If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a routine basis, based on the manufacturer's recommendations.

(D) Cytotoxic drugs. If the preparation is cytotoxic, the following is also applicable.

(i) General.

(I) All personnel involved in the compounding of cytotoxic products shall wear appropriate protective apparel, such as gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, and appropriate gloving.

(II) Appropriate safety and containment techniques for compounding cytotoxic drugs shall be used in conjunction with aseptic techniques required for preparing sterile preparations.

(III) Disposal of cytotoxic waste shall comply with all applicable local, state, and federal requirements.

(IV) Prepared doses of cytotoxic drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with cytotoxic agents.

(ii) Primary engineering control device. Cytotoxic drugs shall be prepared in a Class II or III vertical flow biological safety cabinet or compounding aseptic containment isolator located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:

(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better anteroom; and

(II) have a pressure indicator that can be readily monitored for correct room pressurization.

(E) Cleaning and disinfecting the sterile compounding areas. The following cleaning and disinfecting practices and frequencies apply to direct and contiguous compounding areas, which include ISO Class 5 compounding areas for exposure of critical sites as well as buffer rooms, anterooms, and ante-areas.

(i) The pharmacist-in-charge is responsible for developing written procedures for cleaning and disinfecting the direct and contiguous compounding areas and assuring the procedures are followed.

(ii) These procedures shall be conducted prior to and after each work shift (at a minimum of every 12 hours while the pharmacy is open) and when there are spills or environmental quality breaches.

(iii) Before compounding is performed, all items are removed from the direct and contiguous compounding areas and all surfaces are cleaned of loose material and residue from spills, followed by an application of a residue-free disinfecting agent (e.g., IPA), that is left on for a time sufficient to exert its antimicrobial effect.

(iv) Work surfaces near the direct and contiguous compounding areas in the buffer or clean area are cleaned of loose material and residue from spills, followed by an application of a residue-free disinfecting agent that is left on for a time sufficient to exert its antimicrobial effect.

(v) Floors in the buffer or clean area are cleaned by mopping at least once daily when no aseptic operations are in progress preceding from the buffer or clean room area to the anteroom area.

(vi) In the anteroom area, walls, ceilings, and shelving shall be cleaned monthly.

(vii) Supplies and equipment removed from shipping cartons must be wiped with a disinfecting agent, such as IPA. However, if supplies are received in sealed pouches, the pouches may be removed as the supplies are introduced into the buffer or clean area without the need to disinfect the individual supply items. No shipping or other external cartons may be taken into the buffer or clean area.

(viii) Storage shelving, emptied of all supplies, walls, and ceilings are cleaned and disinfected at planned intervals, monthly, if not more frequently.

(F) Security requirements. The pharmacy may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile preparations, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile pharmaceuticals shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(G) Storage requirements and beyond-use dating.

(i) Storage requirements. All drugs shall be stored at the proper temperature and conditions, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(ii) Beyond-use dating.

(I) Beyond-use dates for compounded sterile preparations shall be assigned based on professional experience, which shall include careful interpretation of appropriate information sources for the same or similar formulations.

(II) Beyond-use dates for compounded sterile preparations that are prepared strictly in accordance with manufacturers' product labeling must be those specified in that labeling, or from appropriate literature sources or direct testing.

(III) Beyond-use dates for compounded sterile preparations that lack justification from either appropriate literature sources or by direct testing evidence must be assigned as described in Chapter 797, Pharmaceutical Compounding--Sterile Preparations of the USP/NF.

{{(A) Prior to September 1, 2008.}}

{{(i) Controlled area.}}

{{(I) Low and Medium Risk Preparations. The pharmacy shall have a designated controlled area for the compounding of sterile pharmaceuticals that is functionally separate from areas for the preparation of non-sterile pharmaceuticals and is constructed to minimize the opportunities for particulate and microbial contamination. This controlled area for the preparation of sterile pharmaceuticals shall:}}

{{(a-) have a controlled environment that is aseptic or contains an aseptic environmental control device(s). If the aseptic environmental control device is located within the controlled area, the controlled area must extend a minimum of six feet from the device and clearly marked to identify the separation between the controlled and non-controlled area;}}

{{(b-) be clean, well lighted, and of sufficient size to support sterile compounding activities;}}

{{(c-) be used only for the compounding of sterile pharmaceuticals;}}

{{(d-) be designed to avoid outside traffic and air flow;}}

{{(e-) be designed such that hand sanitizing and gowning occurs outside the controlled area but is accessible without use of the hands of the compounding personnel;}}

{{(f-) have non-porous and washable floors or floor covering to enable regular disinfection;}}

{{(g-) be ventilated in a manner not interfering with aseptic environmental control conditions;}}

{{(h-) have walls, ceilings, and fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices, and nonshedding. (acoustical ceiling tiles that are coated with an acrylic paint are acceptable);}}

{{(i-) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning; and}}

{{(j-) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles may not be brought into the controlled area.}}

{{(H) High-risk Preparations. In addition to the requirements in subclause (I) of this clause, when high-risk preparations are compounded, the aseptic environment control device(s) shall be located in a controlled area that maintains at least an ISO Class 8 (formerly Class 100,000) environment.}}

{{(ii) Aseptic environment control device(s). The pharmacy shall prepare sterile pharmaceuticals in an appropriate aseptic environmental control device(s) or area, such as a laminar air flow hood, biological safety cabinet, clean room which is capable of maintaining at least ISO Class 5 (formerly Class 100) conditions during normal activity, or other aseptic environmental control devices that produce ISO Class 5 (formerly Class 100) environmental conditions or better. The aseptic environmental control device(s) shall:}}

{{(I) be certified by an independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months or when it is relocated; and}}

{{(H) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures, and the inspection and/or replacement date documented.}}

{{(iii) Automated compounding or counting device. If automated compounding or counting devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding or counting devices used in aseptic processing and document the calibration and verification on a routine basis.}}

{{(B) Low and Medium Risk Preparations.}}

{{(i) Effective September 1, 2008, a pharmacy that prepares low- and medium-risk preparations shall have a clean room/controlled area for the compounding of sterile preparations that is constructed to minimize the opportunities for particulate and microbial contamination. The clean room/controlled area shall:}}

{{(I) be clean, well lit, and of sufficient size to support sterile compounding activities;}}

{{(H) be used only for the compounding of sterile preparations;}}

{{(III) be designed such that hand sanitizing and gowning occurs outside the buffer area but is accessible without use of the hands of the compounding personnel;}}

{{(IV) have non-porous and washable floors or floor covering to enable regular disinfection;}}

~~{{(V) be ventilated in a manner to avoid disruption from the HVAC system and room cross-drafts;}}~~

~~{{(VI) have walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices (e.g., coved), nonshedding and resistant to damage by disinfectant agents.}}~~

~~{{(VII) have junctures of ceilings to walls coved or caulked to avoid cracks and crevices;}}~~

~~{{(VIII) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;}}~~

~~{{(IX) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles shall not be brought into the controlled area;}}~~

~~{{(X) contain an anteroom/ante-zone that provides at least an ISO class 8 air quality which may contain a sink that enables hands-free use with a closed system of soap dispensing to minimize the risk of extrinsic contamination; and}}~~

~~{{(XI) contain a buffer zone or buffer room designed to maintain at least ISO Class 7 conditions. The following is applicable for the buffer area.}}~~

~~{{(a) There shall be some demarcation designation that delineates the anteroom or area from the buffer area.}}~~

~~{{(b) The buffer area shall be segregated from surrounding, unclassified spaces to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the filtered unidirectional airflow environment, and this segregation should be continuously monitored.}}~~

~~{{(c) A buffer zone that is not physically separated from the anteroom shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NE, with limited access to personnel.}}~~

~~{{(d) The buffer area shall not contain sources of water (i.e., sinks) or floor drains.}}~~

~~{{(ii) The pharmacy shall prepare sterile pharmaceuticals in a primary engineering control device, such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator which is capable of maintaining at least ISO Class 5 conditions during normal activity.}}~~

~~{{(I) The primary engineering control shall:}}~~

~~{{(a) be located in the buffer area or room and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system.}}~~

~~{{(b) be certified by an independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months and when it is relocated, in accordance with the manufacturer's specifications; and}}~~

~~{{(c) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification; and the inspection and/or replacement date documented.}}~~

~~{{(II) The compounding aseptic isolator must be placed in an ISO Class 7 cleanroom unless the isolator meets all of the following conditions.}}~~

~~{{(a) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices~~

~~into and out of the isolator and during preparation of compounded sterile preparations.}}~~

~~{{(b) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.}}~~

~~{{(c) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.}}~~

~~{{(C) High-risk Preparations. In addition to the requirements in subparagraph (B) of this paragraph, when high-risk preparations are compounded, the primary engineering control shall be located in a buffer room that provides a physical separation, through the use of walls, doors and pass-throughs and has a minimum differential positive pressure of 0.02 to 0.05 inches water column.}}~~

~~{{(D) Automated compounding device. If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a routine basis, based on the manufacturer's recommendations.}}~~

~~{{(E) Cytotoxic drugs. If the preparation is cytotoxic, the following is also applicable.}}~~

~~{{(i) General.}}~~

~~{{(I) All personnel involved in the compounding of cytotoxic products shall wear appropriate protective apparel, such as gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, and appropriate gloving.}}~~

~~{{(II) Appropriate safety and containment techniques for compounding cytotoxic drugs shall be used in conjunction with aseptic techniques required for preparing sterile preparations.}}~~

~~{{(III) Disposal of cytotoxic waste shall comply with all applicable local, state, and federal requirements.}}~~

~~{{(IV) Prepared doses of cytotoxic drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with cytotoxic agents.}}~~

~~{{(ii) Primary engineering control device. Cytotoxic drugs must be prepared in a Class II or III vertical flow biological safety cabinet or compounding aseptic isolator.}}~~

~~{{(F) Cleaning and disinfecting the sterile compounding areas. The following cleaning and disinfecting practices and frequencies apply to direct and contiguous compounding areas, which include ISO Class 5 compounding areas for exposure of critical sites as well as buffer rooms, anterooms, and ante-areas.}}~~

~~{{(i) The pharmacist-in-charge is responsible for developing written procedures for cleaning and disinfecting the direct and contiguous compounding areas and assuring the procedures are followed.}}~~

~~{{(ii) These procedures shall be conducted prior to and after each work shift (at a minimum of every 12 hours while the pharmacy is open) and when there are spills or environmental quality breaches.}}~~

~~{{(iii) Before compounding is performed, all items are removed from the direct and contiguous compounding areas and all surfaces are cleaned of loose material and residue from spills, followed by an application of a residue-free disinfecting agent (e.g., IPA), that is left on for a time sufficient to exert its antimicrobial effect.}}~~

~~{{(iv) Work surfaces near the direct and contiguous compounding areas in the buffer or clean area are cleaned of loose ma-~~

terial and residue from spills, followed by an application of a residue-free disinfecting agent that is left on for a time sufficient to exert its antimicrobial effect.}]

{(v)} Floors in the buffer or clean area are cleaned by mopping at least once daily when no aseptic operations are in progress preceding from the buffer or clean room area to the anteroom area.}]

{(vi)} In the anteroom area, walls, ceilings, and shelving shall be cleaned monthly.}]

{(vii)} Supplies and equipment removed from shipping cartons must be wiped with a disinfecting agent, such as IPA. However, if supplies are received in sealed pouches, the pouches may be removed as the supplies are introduced into the buffer or clean area without the need to disinfect the individual supply items. No shipping or other external cartons may be taken into the buffer or clean area.}]

{(viii)} Storage shelving, emptied of all supplies, walls, and ceilings are cleaned and disinfected at planned intervals; monthly, if not more frequently.}]

{(G)} Security requirements. The pharmacy may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile preparations, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile pharmaceuticals shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.}]

{(H)} Storage requirements and beyond-use dating.}]

{(i)} Storage requirements. All drugs shall be stored at the proper temperature and conditions, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).}]

{(ii)} Beyond-use dating.}]

{(I)} Beyond-use dates for compounded sterile preparations shall be assigned based on professional experience, which shall include careful interpretation of appropriate information sources for the same or similar formulations.}]

{(II)} Beyond-use dates for compounded sterile preparations that are prepared strictly in accordance with manufacturers' product labeling must be those specified in that labeling, or from appropriate literature sources or direct testing.}]

{(III)} Beyond-use dates for compounded sterile preparations that lack justification from either appropriate literature sources or by direct testing evidence must be assigned as described in Chapter 797, Pharmaceutical Compounding—Sterile Preparations of the USP/NF.}]

(6) - (13) (No change.)

(e) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904182

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-8037

CHAPTER 295. PHARMACISTS

22 TAC §295.13, §295.15

The Texas State Board of Pharmacy proposes amendments to §295.13, concerning Drug Therapy Management by a Pharmacist under Written Protocol of a Physician, and §295.15, concerning Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol of a Physician. The amendments to §295.13, if adopted, will implement the provisions of S.B. 381 as passed by the 81st Texas Legislature which amends Chapter 157 of the Medical Practices Act to allow a physician to delegate to a pharmacist the authority to implement or modify a patient's drug therapy under a protocol, including the authority to sign a prescription drug order for dangerous drugs. The amendments to §295.15, if adopted, implement the provisions of H.B. 1409, passed during the 81st Regular Session of the Texas Legislature, authorizing pharmacists to administer influenza immunizations under the written protocol of a physician to patients over 7 years of age without an established patient-physician relationship.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that pharmacists are adequately supervised by physicians in order to implement or modify a patient's drug therapy and that patients over 7 years of age may receive influenza vaccinations from a pharmacist. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

A public hearing to receive comments on the proposed amendments will be held at 1:00 p.m. on Monday, November 9, 2009, at the Health Professions Council Board Room, William P. Hobby Building, 333 Guadalupe Street, Tower II, Room 225, Austin, Texas 78701. Persons planning to present comments to the Board are asked to provide a written copy of their comments prior to the hearing or bring 20 copies to the hearing. Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, Fax (512) 305-8082. Comments must be received by 5 pm, November 6, 2009.

The amendments are proposed under §§551.002, 554.051, and 554.057 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.057 as authorizing the agency, with the advice of the Texas Medical Board, to adopt rules that allow a

pharmacist to implement or modify a patient's drug therapy and sign prescriptions for dangerous drugs pursuant to a physician's delegation under §157.101(b-1).

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§295.13. *Drug Therapy Management by a Pharmacist under Written Protocol of a Physician.*

(a) - (b) (No change.)

(c) Physician delegation to a pharmacist.

(1) As specified in Chapter 157 of the Texas Medical Practices Act, a physician may delegate to a properly qualified and trained pharmacist acting under adequate physician supervision the performance of specific acts of drug therapy management authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol.

(2) A delegation under paragraph (1) of this subsection may include the implementation or modification of a patient's drug therapy under a protocol, including the authority to sign a prescription drug order for dangerous drugs, if:

(A) the delegation follows a diagnosis, initial patient assessment, and drug therapy order by the physician;

(B) the pharmacist practices in a hospital, hospital-based clinic, or an academic health care institution; and

(C) the hospital, hospital-based clinic, or academic health care institution in which the pharmacist practices has bylaws and a medical staff policy that permit a physician to delegate to a pharmacist the management of a patient's drug therapy.

(3) A pharmacist who signs a prescription for a dangerous drug under authority granted under paragraph (2) of this subsection shall:

(A) notify the board that a physician has delegated the authority to sign a prescription for dangerous drugs. Such notification shall:

- (i) be made on an application provided by the board;
- (ii) occur prior to signing any prescription for a dangerous drug;
- (iii) be updated annually; and
- (iv) include a copy of the written protocol.

(B) include the pharmacist's name, address, and telephone number as well as the name, address, and telephone number of the delegating physician on each prescription for a dangerous drug signed by the pharmacist.

(4) The board shall post the following information on its Web site:

(A) the name and license number of each pharmacist who has notified the board that a physician has delegated authority to sign a prescription for a dangerous drug;

(B) the name and address of the physician who delegated the authority to the pharmacist; and

(C) the expiration date of the protocol granting the authority to sign a prescription.

(d) ~~[(e)]~~ Pharmacist Training Requirements.

(1) Initial requirements. A pharmacist shall maintain and provide to the Board within 24 hours of request a statement attesting to the fact that the pharmacist has within the last year:

(A) completed at least six hours of continuing education related to drug therapy offered by a provider approved by the Accreditation Council for Pharmacy Education (ACPE); or

(B) engaged in drug therapy management as allowed under previous laws or rules. A statement from the physician supervising the acts shall be sufficient documentation.

(2) Continuing requirements. A pharmacist engaged in drug therapy management shall annually complete six hours of continuing education related to drug therapy offered by a provider approved by the Accreditation Council for Pharmacy Education (ACPE). (These hours may be applied towards the hours required for renewal of a license to practice pharmacy.)

(e) ~~[(d)]~~ Supervision. Physician supervision shall be as specified in the Medical Practice Act, Chapter 157 and shall be considered adequate if the delegating physician:

(1) is responsible for the formulation or approval of the written protocol and any patient-specific deviations from the protocol and review of the written protocol and any patient-specific deviations from the protocol at least annually and the services provided to a patient under the protocol on a schedule defined in the written protocol;

(2) has established and maintains a physician-patient relationship with each patient provided drug therapy management by a delegated pharmacist and informs the patient that drug therapy will be managed by a pharmacist under written protocol;

(3) is geographically located so as to be able to be physically present daily to provide medical care and supervision;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problem or complication encountered;

(5) is available through direct telecommunication for consultation, assistance, and direction; and

(6) determines that the pharmacist to whom the physician is delegating drug therapy management establishes and maintains a pharmacist-patient relationship with the patient.

(f) ~~[(e)]~~ Records.

(1) Maintenance of records.

(A) Every record required to be kept under this section shall be kept by the pharmacist and be available, for at least two years from the date of such record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(i) the records maintained in the alternative system contain all of the information required on the manual record; and

(ii) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(2) Written protocol.

(A) A copy of the written protocol and any patient-specific deviations from the protocol shall be maintained by the pharmacist.

(B) A pharmacist shall document all interventions undertaken under the written protocol within a reasonable time of each intervention. Documentation may be maintained in the patient medication record, patient medical chart, or in a separate log.

(C) A standard protocol may be used or the attending physician may develop a drug therapy management protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for that patient. A pharmacist shall maintain a copy of any deviations from the standard protocol ordered by the physician.

(D) Written protocols, including standard protocols, any patient-specific deviations from a standard protocol, and any individual patient protocol, shall be reviewed by the physician and pharmacist at least annually and revised if necessary. Such review shall be documented in the pharmacist's records. Documentation of all services provided to the patient by the pharmacist shall be reviewed by the physician on the schedule established in the protocol.

(g) [(f)] Confidentiality.

(1) In addition to the confidentiality requirements specified in §291.27 of this title (relating to Confidentiality) a pharmacist shall comply with:

(A) the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and any rules adopted pursuant to this act;

(B) the requirements of Medical Records Privacy contained in Chapter 181, Health and Safety Code;

(C) the Privacy of Health Information requirements contained in Chapter 28B of the Insurance Code; and

(D) any other confidentiality provisions of federal or state laws.

~~[(1) A pharmacist shall provide adequate security to prevent indiscriminate or unauthorized access to confidential records. If confidential health information is not transmitted directly between a pharmacy and a physician, but is transmitted through a data communication device, the confidential health information may not be accessed or maintained by the operator of the data communication device unless specifically authorized to obtain the confidential information by this subsection.]~~

~~[(2) A confidential record is privileged and a pharmacist may release a confidential record only to:]~~

~~[(A) the patient or the patient's agent;]~~

~~[(B) a practitioner or another pharmacist if, in the pharmacist's professional judgement, the release is necessary to protect the patient's health and well-being;]~~

~~[(C) the board or to a person or another state or federal agency authorized by law to receive the confidential record;]~~

~~[(D) a law enforcement agency engaged in investigations of a suspected violation of Chapter 481 or 483, Health and Safety Code; or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et. seq.);]~~

~~[(E) a person employed by a state agency that licenses a practitioner, if the person is performing the person's official duties; or]~~

~~[(F) an insurance carrier or other third party payor authorized by the patient to receive the information.]]~~

~~[(3) A pharmacist shall comply with:]~~

~~[(A) the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and any rules adopted pursuant to this act;]~~

~~[(B) the requirements of Medical Records Privacy contained in Chapter 181, Health and Safety Code;]~~

~~[(C) the Privacy of Health Information requirements contained in Chapter 28B of the Insurance Code; and]~~

~~[(D) any other confidentiality provisions of federal or state laws.]]~~

(2) [(4)] This section shall not affect or alter the provisions relating to the confidentiality of the physician-patient communication as specified in the Medical Practice Act, Chapter 159.

(h) [(g)] Construction and Interpretation.

(1) As specified in the Medical Practice Act, Chapter 157, this section does not restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols.

(2) As specified in the Medical Practice Act, Chapter 157, this section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Act, §554.004.

§295.15. Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol of a Physician.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--The Accreditation Council for Pharmacy Education. [American Council on Pharmaceutical Education.]

(2) Act--The Texas Pharmacy Act, Chapter 551 - 566 and 568 - 569, Occupations Code, as amended.

(3) - (13) (No change.)

(c) Pharmacist certification requirements. Pharmacist who enter into a written protocol with a physician to administer immunizations or vaccinations shall:

(1) (No change.)

(2) maintain documentation of:

(A) (No change.)

(B) 3 hours of continuing education every 2 years [beginning January 1, 2001,] which are designed to maintain competency in the disease states, drugs, and administration of immunizations or vaccinations; and

(C) (No change.)

(d) Supervision. Pharmacists involved in the administration of immunizations or vaccinations shall be under the supervision of a physician. Physician supervision shall be considered adequate if the delegating physician:

(1) (No change.)

(2) has established a physician-patient relationship with each patient under 14 years of age and referred the patient to the pharmacist; except a pharmacist may administer an influenza vaccination to a patient over seven years of age (i.e., eight years of age and over) without an established physician-patient relationship;

(3) - (5) (No change.)

(e) Special Provisions. Pharmacists involved in the administration of immunizations or vaccinations under their license to practice pharmacy shall meet the following restrictions and requirements.

(1) (No change.)

(2) Pharmacists may administer immunizations or vaccinations to a patient under 14 years of age only upon a referral from a physician who has an established physician-patient relationship with each patient. However, a pharmacist may administer an influenza vaccination to a patient over seven years of age (i.e., eight years of age and over) without an established physician-patient relationship.

(3) - (7) (No change.)

(f) - (h) (No change.)

(i) Confidentiality.

(1) In addition to the confidentiality requirements specified in §291.27 of this title (relating to Confidentiality) a pharmacist shall comply with:

(A) the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and any rules adopted pursuant to this act;

(B) the requirements of Medical Records Privacy contained in Chapter 181, Health and Safety Code;

(C) the Privacy of Health Information requirements contained in Chapter 28B of the Insurance Code; and

(D) any other confidentiality provisions of federal or state laws.

~~[(1) A pharmacist shall provide adequate security to prevent indiscriminate or unauthorized access to confidential records. If confidential health information is not transmitted directly between a pharmacy and a physician, but is transmitted through a data communication device, the confidential health information may not be accessed or maintained by the operator of the data communication device unless specifically authorized to obtain confidential information by this subsection.]~~

~~[(2) A confidential record is privileged and a pharmacist may release a confidential record only to:]~~

~~[(A) the patient or the patient's agent;]~~

~~[(B) a practitioner or another pharmacist if, in the pharmacist's professional judgement, the release is necessary to protect the patient's health and well-being;]~~

~~[(C) the board or to a person or another state or federal agency authorized by law to receive the confidential record;]~~

~~[(D) a law enforcement agency engaged in investigations of a suspected violation of Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et. seq.);]~~

~~[(E) a person employed by a state agency that licenses a practitioner, if the person is performing the person's official duties; or]~~

~~[(F) an insurance carrier or other third party payor authorized by the patient to receive the information.]~~

~~[(3) A pharmacist shall comply with:]~~

~~[(A) the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and any rules adopted pursuant to this act;]~~

~~[(B) the requirements of Medical Records Privacy contained in Chapter 181, Health and Safety Code;]~~

~~[(C) the Privacy of Health Information requirements contained in Chapter 28B of the Insurance Code; and]~~

~~[(D) any other confidentiality provisions of federal or state laws.]~~

(2) [(4)] This section shall not affect or alter the provisions relating to the confidentiality of the physician-patient communication as specified in the Medical Practice Act, Chapter 159.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904177

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-8037



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10, concerning Board Committees.

The amendment will define the responsibilities of the Fifth-Year Accounting Students Scholarship Program Advisory Committee.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed amendment will be none.

Mr. Treacy has determined that for the first five-year period the proposed amendment is in effect the public benefits expected as a result of adoption of the rule will be an understanding of the purpose, function and constituency of the committee.

The probable economic cost to persons required to comply with the proposed amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed amendment is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.10. Board Committees.

(a) Committee appointments. Appointments to standing committees and ad hoc committees shall be considered annually by the board's presiding officer to assist in carrying out the functions of the board under the provisions of the Public Accountancy Act. Committee appointments shall be made by the presiding officer for a term of two years but may be terminated at any point by the presiding officer. Committee members may be re-appointed at the discretion of the presiding officer. The board's presiding officer shall be an ex officio member of each standing committee and ad hoc committee and chair of the executive committee.

(b) Committee actions. The actions of the committees are recommendations only and are not binding until ratification by the board at a regularly scheduled meeting.

(c) Committee meetings. Committee meetings shall be held at the call of the committee chair, and a report to the board at its next regularly scheduled meeting shall be made by such chair or, in the absence of the chair, by another board member serving on the committee.

(d) Vacancies. If for any reason a vacancy occurs on a committee, the board's presiding officer may appoint a replacement in accordance with subsection (a) of this section.

(e) Standing committee structure and charge to committees. The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be a policy-making committee comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The Executive Committee shall also be the board's audit committee. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

- (A) litigation;
- (B) emergency suspensions pursuant to board rule §519.43 of this title;
- (C) proposed changes in the board rules of professional conduct (the rules);
- (D) amendments to the Act;
- (E) responses/positions relating to papers, reports, and other submissions from national associations or boards;
- (F) legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization; and
- (G) special issues.

(2) The continuing professional education committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the mandatory continuing professional education program as it relates to reporting and attendance requirements, registration and monitoring of continuing professional education sponsors, disciplinary actions, reporting forms, and office procedures;

(B) investigations of sponsor compliance with the terms of the sponsor agreements, including the related recordkeeping requirements;

(C) the results of monitoring continuing professional education courses for the purpose of evaluating the facilities, course content as presented, and the adequacy of the course presenter(s);

(D) any significant deficiencies observed in carrying out subparagraphs (B) and (C) of this paragraph; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the mandatory continuing professional education program as it relates to licensees and to relations with sponsors of continuing professional education.

(3) The qualifications committee shall be a working committee comprised of at least two board members, one of whom shall

serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the educational qualifications of an applicant for the Uniform Certified Public Accountant Examination in accordance with Chapter 511, Subchapter C [§§511.51 through 511.59] of this title (relating to Educational Requirements) and courses that may be used to meet the education requirements to take the examination;

(B) the administration, security, discipline, and other aspects of the conduct of the Uniform Certified Public Accountant Examination in Texas;

(C) the work experience qualifications of an applicant for the certified public accountant certificate in accordance with §§511.121 through 511.124 of this title (relating to Experience Requirements); and/or

(D) where applicable, the equivalency examination measuring the professional competency of an applicant for a CPA certificate by reciprocity; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the qualifications process.

(4) The licensing committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) applications for certification, registration, and licensure;

(B) requests or applications for reinstatement of any certificate, registration, or license which the board previously has revoked, suspended, or refused to renew; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies as they relate to the licensing process.

(5) The behavioral enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) study complaints involving suspected violations of the Act and the board's rules and make recommendations to the board as appropriate;

(B) follow up on board orders to insure that certificate or registration holders and others adhere to sanctions prescribed by or agreements with the board; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the behavioral restraints of the rules and the Act.

(6) The technical standards review I committee and the technical standards review II committee shall be working committees each comprised of at least two board members, one of whom shall serve as chair, assisted by at least three non-board members who shall serve in an advisory capacity. The committees shall:

(A) study complaints from any source involving suspected violations of the technical standards included in the rules and shall make recommendations to the board as appropriate;

(B) follow up on board orders to insure that certificate or registration holders and others adhere to sanctions prescribed by or agreements with the board; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to enforcement of technical standards.

(7) The peer review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) conduct a periodic review and evaluation of reports publicly filed with the State of Texas (or any board, commission, or agency thereof) and of each of the various types of reports, as defined by board rule, of each practice unit, as defined by board rule, which is engaged in the practice of public accountancy in the State of Texas;

(B) refer to the technical standards review committee egregious substandard reports issued by practice units for which educational rehabilitation has not been effective; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the peer review program.

(8) The board rules committee shall be a policy-making committee comprised of at least three board members, one of whom shall serve as chair. The committee shall make recommendations to the board concerning the board's rules, opinions and policies. All working committees shall refer proposed changes to the board's rules, opinions and policies to the rules committee for consideration for recommendation to the board.

(9) The peer assistance oversight committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall oversee the peer assistance program administered by the Texas Society of Certified Public Accountants as required under the Texas Health and Safety Code, §467.001(1)(B) [Chapter 467.001(B)], and insure that the minimum criteria as set out by the Department of State Health Services [Texas Commission on Alcohol and Drug Abuse] are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a semi-annual basis, by case number, on the status of the program.

(10) The constructive enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by non-board CPA members. At least one Committee member shall be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of constructive enforcement advisory committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) investigate matters forwarded to the committee from any other board committee or board staff in accordance with board instruction and policy;

(B) prepare, as appropriate, investigative reports regarding each referred matter;

(C) inform referring board committees or board staff of the results of its investigations;

(D) inform the appropriate committee when possible violations of board rules and the Public Accountancy Act are observed; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the constructive enforcement program.

(11) The Fifth-Year Accounting Students Scholarship Program advisory committee was created in §901.657 of the Act and consists of eight members appointed by the board for the purpose of advising the board on how scholarships under the Fifth-Year Accounting Students Scholarship Program should be established and administered; the amount of money needed to adequately fund the scholarships and the maximum amount that may be awarded in any given year to an individual student; and any priorities among the factors of financial need, ethnic or racial minority status, and scholastic ability and performance.

(f) Ad hoc advisory committees. Ad hoc advisory committees may be established by the board's presiding officer and members and advisory members appointed as appropriate.

(g) Policy guidelines. All advisory committee members performing any duties utilizing board facilities and/or who have access to board records, shall conform and adhere to the standards, board rules, and personnel policies of the board as described in its personnel manual and to the laws of the State of Texas governing state employees.

(h) Conflicts of interest. To avoid a conflict of interest or the appearance of a conflict of interest, no committee member may provide a report or expert testimony for or otherwise advocate on behalf of a complainant or a respondent in a disciplinary matter pending before the board while serving on a standing committee of the board. A Committee member is not in violation of this rule by reason of testimony given or a report prepared as part of a litigation support engagement in another forum being considered by a committee of the board in an enforcement action; provided however, the board's rules on recusal of that committee member apply.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904085

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842

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CHAPTER 520. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM

22 TAC §520.1

The Texas State Board of Public Accountancy (Board) proposes new §520.1, concerning Authority and Purpose.

Proposed new §520.1 will inform the public of the authority to administer and the purpose of the Fifth-Year Accounting Students Scholarship Program.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed new rule will be none.

Mr. Treacy has determined that for the first five-year period the proposed new rule is in effect the public benefits expected as a result of adoption of the rule will be they are informed of the program and what it offers.

The probable economic cost to persons required to comply with the proposed new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be

impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§520.1. Authority and Purpose.

(a) Authority for this chapter is provided in Subchapter D, §901.155 of the Act, which is titled Scholarship Trust Fund for Fifth-Year Accounting Students. This chapter establishes procedures to administer the fifth-year accounting students scholarship program.

(b) The purpose of the fifth-year accounting students scholarship program is to provide financial assistance to students intending to take the written examination conducted for the purpose of granting a certificate of certified public accountant and thus increase the number of highly trained and educated Certified Public Accountants available to serve the residents of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904086

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842



22 TAC §520.2

The Texas State Board of Public Accountancy (Board) proposes new §520.2, concerning Definitions.

Proposed new §520.2 will define the terms used in the Fifth-Year Accounting Student Scholarship Program.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed new rule will be none.

Mr. Treacy has determined that for the first five-year period the proposed new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be an understanding of the scholarship program's terms.

The probable economic cost to persons required to comply with the proposed new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§520.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Cost of attendance--An estimate of the expenses incurred by a typical financial aid student in attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(2) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined by the US Department of Education Definition of Expected Family Contribution.

(3) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with board guidelines.

(4) Half-time student--For undergraduates, a person who is enrolled or is expected to be enrolled for the equivalent of at least six but not more than nine semester credit hours. For graduate students, a person who is enrolled or is expected to be enrolled for the equivalent of 4.5 but not more than six semester credit hours.

(5) Institution--Public and private or independent institutions of higher education as defined in Texas Education Code, §61.003.

(6) Period of enrollment--The term or terms within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through the program described in this chapter.

(7) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(8) Resident of Texas--A resident of the State of Texas as determined in accordance with 19 TAC Chapter 21, Subchapter B (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904087

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842



22 TAC §520.3

The Texas State Board of Public Accountancy (Board) proposes new §520.3, concerning Institutions.

Proposed new §520.3 will inform the public and universities of the eligibility, approval, responsibilities and reporting obligations of the universities wishing to participate in the scholarship program.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed new rule will be none.

Mr. Treacy has determined that for the first five-year period the proposed new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be an understanding of the universities' responsibilities in the scholarship program.

The probable economic cost to persons required to comply with the proposed new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§520.3. Institutions.

(a) Eligibility.

(1) Any college or university defined as a public, private or independent institution of higher education by Texas Education Code, §61.003, is eligible to participate in the Fifth-Year Accounting Students Scholarship Program.

(2) No institution may, on the grounds of race, color, national origin, gender, religion, age or disability exclude an individual from participation in, or deny the benefits of the program described in this chapter.

(3) Each participating institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) Approval.

(1) Each approved institution must enter into an agreement with the board, the terms of which shall be prescribed by the Executive Director.

(2) An institution must be approved by April 1 in order for qualified students enrolled in that institution to be eligible to receive scholarships in the following fiscal year.

(c) Responsibilities.

(1) Probation Notice. If the institution is placed on public probation by its accrediting agency, it must immediately advise scholarship recipients of this condition and maintain evidence in each student's file to demonstrate that the student was so informed.

(2) Disbursements to Students.

(A) The institution must maintain records to prove the receipt of program funds to the student or the crediting of such funds to the student's school account.

(B) If the Executive Director has reason to believe that an institution has disbursed funds for unauthorized purposes, the institution will be notified and offered an opportunity for a hearing pursuant to the applicable procedures outlined in Chapter 519 of this title (relating to Practice and Procedure) and the rules of procedure of the State Office of Administrative Hearings. Thereafter, if the board determines that funds have been improperly disbursed, the institution shall become primarily responsible for restoring the funds to the board. No further disbursements of scholarship funds shall be permitted to students at that institution until the funds have been repaid.

(d) Reporting.

(1) All institutions must timely meet board reporting requirements. Such reporting requirements shall include reports specific to allocation and reallocation of scholarship funds as well as progress and year-end reports.

(2) Penalties for Late Reports.

(A) An institution that postmarks or electronically submits a progress report a week (seven (7) calendar days) or more after its due date will be ineligible to receive additional funding through the reallocation occurring at that time.

(B) The Executive Director may penalize an institution by reducing its allocation of funds in the following year by up to 10 percent for each progress report that is postmarked or submitted electronically more than a week (seven (7) calendar days) late.

(C) The Executive Director may assess more severe penalties against an institution if any report is received by the Board more than one month (thirty (30) calendar days) after its due date. The maximum penalty for a single year is 30 percent of the school's allocation. If penalties are invoked two consecutive years, the institution may be penalized an additional 20 percent.

(3) If the Executive Director determines that a penalty is appropriate, the institution will be notified by certified mail, addressed to the Program Officer. Within 21 days from the time that the Program Officer receives the written notice, the institution must submit a written response appealing the board's decision, or the penalty shall become final and no longer subject to an appeal. An appeal under this section will be conducted in accordance with the rules provided in the applicable sections of Chapter 519 of this title and the procedural rules of the State Office of Administrative Hearings.

(e) Program Reviews. If selected for such by the board, participating institutions must submit to program reviews of activities related to the Fifth-Year Accounting Students Scholarship Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904088

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842



22 TAC §520.4

The Texas State Board of Public Accountancy (Board) proposes new §520.4, concerning Eligible Students.

Proposed new §520.4 will inform interested parties of who may participate in the scholarship program.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed new rule will be none.

Mr. Treacy has determined that for the first five-year period the proposed new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be an understanding by the public of the scholarship program's standards to participate.

The probable economic cost to persons required to comply with the proposed new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and

feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§520.4. Eligible Students.

(a) To receive funds, a student must:

(1) be enrolled on at least a half-time basis at an approved institution in Texas;

(2) maintain satisfactory academic progress in his or her program of study as defined by the institution;

(3) have completed at least 120 credit hours of college work, including at least 15 hours of accounting;

(4) sign a written statement confirming his or her intent to take the written examination conducted by the board for the purpose of granting a certificate of "certified public accountant";

(5) confirm he or she has not yet taken the CPA examination in Texas or another jurisdiction;

(6) maintain a cumulative grade point average, as determined by the institution, that is equal to or greater than the grade point average required by the institution for graduation;

(7) be a resident of Texas; and

(8) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from Selective Service registration under federal law.

(b) In selecting recipients the Program Officer shall consider at a minimum the following factors relating to each applicant:

(1) the applicant's financial need, which may be based on but not limited to the cost of the applicant attending school less family contribution and any gift aid (an award may not exceed the applicant's need nor be less than the amount calculated in accordance with the formula provided institutions in the application instructions);

(2) scholastic ability and performance as measured by the student's cumulative college grade point average as determined by the institution in which the student is enrolled; and

(3) ethnic or racial minority status.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904089

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842



22 TAC §520.5

The Texas State Board of Public Accountancy (Board) proposes new §520.5, concerning Award Amounts and Uses.

Proposed new §520.5 will establish the mechanism to determine the amount of the scholarship award and the purpose the award may be used.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed new rule will be none.

Mr. Treacy has determined that for the first five-year period the proposed new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be to understand how the advisory committee establishes the amount and purpose of the scholarship program award.

The probable economic cost to persons required to comply with the proposed new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and

feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§520.5. Award Amounts and Uses.

(a) Funds awarded through this program may include any gifts, grants and donations of real or personal property from any entity, subject to limitations or conditions set by law, for the purposes of this chapter.

(b) Award Amount and Disbursements.

(1) The minimum and maximum annual award for a student through this program is an amount recommended by the advisory committee and announced to institutions in the allocation announcement sent out for the relevant year, less any amount previously received through this program.

(2) No individual may receive an aggregate total of more than the amount recommended by the advisory committee and announced to institutions in the allocation announcement through the program.

(3) An individual student's scholarship is to be paid out in the form of at least one disbursement per semester.

(c) No scholarship disbursed to a student may be used for any purpose other than for meeting the cost of attending an approved institution.

(d) At the time an award is made to a student, it may not exceed the student's need. No future adjustment is required if subsequent awards during the student's period of enrollment cause an over award of \$300 or less.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904090

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842



22 TAC §520.6

The Texas State Board of Public Accountancy (Board) proposes new §520.6, concerning Allocations and Reallocations.

Proposed new §520.6 requires the establishment of a formula by the Board and Advisory Committee for the allocation of the scholarship program money and the requirement to establish dates for the institutions to encumber the allocations.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed new rule will be none.

Mr. Treacy has determined that for the first five-year period the proposed new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will inform the public and in particular the institutions of how the scholarship funds will be allocated and the creation of an encumbrance date.

The probable economic cost to persons required to comply with the proposed new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§520.6. Allocations and Reallocations.

(a) The board, with the assistance of the Advisory Committee, shall develop a formula for allocating funds to participating institutions in a way that fulfills the purpose of the program.

(b) Unless otherwise indicated, institutions will have until a date specified by the board via a policy memo addressed to the Program Officer at the institution to encumber all funds allocated to them. On that date, institutions lose claim to any unencumbered funds and the unencumbered funds are available to the board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904091

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842

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22 TAC §520.7

The Texas State Board of Public Accountancy (Board) proposes new §520.7, concerning Disbursements to Institutions.

Proposed new §520.7 establishes a program officer to disburse the scholarship program funds.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed new rule will be none.

Mr. Treacy has determined that for the first five-year period the proposed new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be to inform eligible students of the disbursement process.

The probable economic cost to persons required to comply with the proposed new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because

the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§520.7. Disbursements to Institutions.

Requests for program funds for eligible students shall be made by the Program Officer and program funds, up to the maximum allocation for the institution, shall be disbursed to the institution for immediate release to the students or immediate application to the students' accounts at the institution. Requests for program funds may be made at any time during the academic year prior to the reallocation deadline.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904092

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842

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22 TAC §520.8

The Texas State Board of Public Accountancy (Board) proposes new §520.8, concerning Retroactive Disbursements.

Proposed new §520.8 creates the opportunity for a disbursement from the scholarship fund after the enrollment period.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed new rule will be none.

Mr. Treacy has determined that for the first five-year period the proposed new rule is in effect the public benefits expected as a result of adoption of the proposed new rule is to inform the public of the funds they may be eligible for.

The probable economic cost to persons required to comply with the proposed new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§520.8. Retroactive Disbursements.

(a) A student may receive a disbursement after the end of his or her period of enrollment if the student:

(1) owes funds to the institution for the period of enrollment for which the award is being made; or

(2) received a student loan that is still outstanding for the period of enrollment for which the award is being made.

(b) Funds that are disbursed retroactively must either be used to pay the student's outstanding balance, including interest, from his or her period of enrollment at the institution or to make a payment against an outstanding loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904093

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842



22 TAC §520.9

The Texas State Board of Public Accountancy (Board) proposes new §520.9, concerning Advisory Committee.

Proposed new §520.9 creates an advisory committee to advise the Board on allocation of the scholarship fund.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed new rule will be none.

Mr. Treacy has determined that for the first five-year period the proposed new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be to understand the process that the Board uses in allocating scholarship fund money.

The probable economic cost to persons required to comply with the proposed new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§520.9. Advisory Committee.

(a) The board shall appoint an advisory committee to advise the board concerning assistance provided under this chapter to fifth-year accounting students.

(1) The advisory committee shall consist of:

(A) a presiding officer named by the board;

(B) one representative named by the board;

(C) one representative named by the Texas Society of Certified Public Accountants;

(D) a Texas representative of the American Accounting Association named by that organization;

(E) one representative named by the National Association of Black Accountants;

(F) one representative named by the American Association of Hispanic Certified Public Accountants; and

(G) two representatives named by the Texas Higher Education Coordinating Board who are the chairs of accounting departments at Texas colleges and universities, one of whom must be a representative of a private college or university and the other must be a representative from a college or university that primarily serves minority students.

(2) The costs of participation on an advisory committee of a member representing a particular organization or agency shall be borne by that member or the organization or agency the member represents.

(b) The duties of the advisory committee shall be to advise the board on:

(1) how the scholarships provided for under this subchapter should be established and administered to best promote the public purpose of the scholarships;

(2) the amount of money needed to adequately fund the scholarship program; and

(3) setting priorities among the factors identified by §520.4 of this title (relating to Eligible Students).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904094

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842



22 TAC §520.10

The Texas State Board of Public Accountancy (Board) proposes new §520.10, concerning Recognition of Accounting Firms Hiring and Offering Internships.

Proposed new §520.10 establishes a method to provide recognition to accounting firms participating in the scholarship fund program.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the proposed new rule will be none.

Mr. Treacy has determined that for the first five-year period the proposed new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be the encouraged participation by accounting firms in the scholarship fund program.

The probable economic cost to persons required to comply with the proposed new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments

must be received at the Board no later than noon on November 2, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§520.10. Recognition of Accounting Firms Hiring and Offering Internships.

Accounting firms may be recognized by the board for their contribution to the training and hiring of minority or disadvantaged accounting students. The board may publish in its Board Report the names of accounting firms providing internships or hiring two or more disadvantaged or minority students each calendar year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904095

J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 305-7842



PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §§651.1 - 651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes amendments to §§651.1 - 651.3, which specifies the fees charged by the Council, including fees for facility registration applications and renewals, Occupational

Therapy Late Renewal Fee and License Restoration Fee, and a new Pre-Licensure Approval Letter administrative fee.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners (Executive Council), has determined that, as a result of the amendments, there will be a fiscal impact to facilities which are registered with the Executive Council; Occupational Therapist and Occupational Therapy Assistant licensees who do not renew timely or must restore their licenses; and potential applicants with a criminal history, who desire a pre-licensure approval letter from the Physical Therapy Board or Occupational Therapy Board.

Mr. Maline has also determined that for the first five-year period this amendment is in effect there will be no additional costs to state or local governments as a result of enforcing or administering this amendment.

The proposed amendment to §651.1(h) and (i), relating to fee changes to Late Fees Renewal (licensees) and License Restoration Fee for all licensees, is necessary to implement HB 1785, 81st Legislature, Regular Session, which amends §454.252 and §454.253, Occupations Code. Prior to the amendment, a licensee with an expired license paid a late fee tied to an outside variable - the national examination fee. The expired license late fee will now be tied to the license renewal fee, which is set by the agency. The current cost to take the NBCOT national examination is \$420. The two year renewal fee for an Occupational Therapist license is \$217, and it is \$167 for an Occupational Therapy Assistant license. The penalty cost for a late renewal and the license restoration fee will be a significantly reduced fee for all licensees under the new rule.

The proposed amendment to §651.3(h), relating to the Pre-Licensure Approval Letter, is necessary to implement HB 963, 81st Legislature, Regular Session. HB 963 amends Chapter 53, Occupations Code by adding Subchapter D. This directs licensing authorities to evaluate a perspective licensee's criminal background, and issue a criminal history evaluation letter if requested by a perspective licensee. New §53.105 states that "A licensing authority may charge a person requesting an evaluation under this subchapter a fee adopted by the authority. Fees adopted by a licensing authority under this subchapter must be in an amount sufficient to cover the cost of administering this subchapter." The Executive Council staff has estimated that \$50 per investigative case is a sufficient amount to cover costs based on similar activities in the agency.

The proposed amendments to §651.1 and §651.2, relating to fee changes to facility registration applications and renewals, are necessary for the Executive Council to utilize revenue, as provided in Article VIII and Article IX of the General Appropriations Act (Senate Bill 1, 81st Legislature, Regular Session). The revenue is contingent upon the Executive Council assessing fees sufficient to generate \$129,185 in additional revenue during the 2010 - 2011 biennium. Under the current fee structure, the Executive Council will not generate enough revenue during the 2010 - 2011 biennium to meet the amount necessary to access the contingent revenue, and so must increase fees.

Mr. Maline has also determined that for the first five-year period this amendment is in effect, the public benefit anticipated as a result of adopting these amendments will be the Executive Council's ability to better protect the health, safety and welfare of the citizens by utilizing additional funding for administration and enforcement of the Physical Therapy and Occupational Therapy

Practice Acts and rules. The administration and enforcement of the applicable laws includes the investigation of consumer complaints, on-site compliance checks, and pursuing action against persons who choose to endanger the health, safety and welfare of the citizens by violating the two boards' practice acts and rules.

The 80th Texas Legislature (2007) adopted House Bill 3430, which amended Chapter 2006 of the Texas Government Code. As amended, Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses by the amendments to §651.1(h) and (i), and §651.3(h), as these fees apply to individuals and not businesses. Further, with one exception, fees are reduced. Therefore an economic impact statement or regulatory flexibility analysis is not required for these amendments. However, the amendments to §651.1(j), (k), (l), and (m), and §651.2(k), (l), (m), and (n) will cause an adverse economic impact on some small businesses (registered facilities) that provide physical and/or occupational therapy services. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis follows.

ECONOMIC ANALYSIS

The Executive Council registers facilities in which physical therapists and occupational therapists practice. The facilities listed in Subtitle B, Title 4, Health and Safety Code are exempt from registration with the Executive Council. Since the agency does not collect data concerning employee numbers or gross income on its registered facilities, we must make assumptions on the number of small and micro businesses it regulates. A second assumption is that those owners with one or two facilities can be categorized as having micro businesses, and that the majority of the remaining owners regulated by the agency are small businesses. The owners who register the most facilities (approximately 10 - 15) tend to be corporations, some Texas owned and some not.

The Executive Council has 34 different facility fee codes and amounts, and there are six different categories of facilities - PT Primary, PT Additional, OT Primary, OT Additional, OT Linked, and OT Additional Linked. There is a different fee amount associated with each of these categories, and the application fee and renewal fees for each category are also different. As the fee structure has evolved and grown more complex over the past 15 years, the attendant confusion by facility owners has also grown. The Executive Council, with the PT and OT boards' concurrence, is taking this opportunity to simplify the fee structure, by making all application fees and renewal fees the same, and merging the different facility categories. Twelve existing categories are being reduced to one, and twelve different application and annual renewal fees ranging from \$30 to \$314 are being changed to just one fee - \$215.

Figure 1: 22 TAC Chapter 651--Preamble

Since the agency does not collect data concerning employee numbers or gross income on its registered facilities, this analysis is based on several assumptions about the small and micro businesses it regulates. One assumption is that the majority of

the owners of the 3,463 facilities registered by the agency are self-employed therapists, and their businesses are defined as 621340 on the North American Industrial Classification System (NAICS). The classification of 621340 covers "Offices of Physical, Occupational and Speech Therapists, and Audiologists."

Of the total number of facilities registered as of 9/3/09, owners with one or two facilities comprise 1,416 (87%) of the total 1,621 owner population. Generally, the economic impact of the facility fee change on 974 of the owners with either one or two facilities (60% of the total number of owners) will be a net savings. 503 owners with either two or three facilities (30% of the total number of owners) will have a total fee increase of approximately \$85 per year. The remaining 10% of owners - most of which we assume would be in the small business category - will see a greater increase in the registration fees; the new amount depending on the number and type of facilities owned. Those owners who have more than two facilities will pay higher registration fees due to the leveling of the fees and higher number of facilities owned. Micro-businesses should be affected minimally if at all, and when they are, should not have a disparate effect compared to the regulated facility population. We used a worse case scenario in our computations, as they are based on using the renewal fee vs. application fee. The current application fees are larger than the renewal fees. We see no other impacts on small businesses other than the fee change.

Figure 2: 22 TAC Chapter 651--Preamble

The proposed leveling of the fees achieves two goals: First, the overall fee increase will affect the least number of small business owners. Secondly, it will allow the consolidation and simplification of the facility registration fees by removing all categories of facilities but one. Consolidation eliminates the categories of additional, linked primary, and additional linked primary. There are also over 30 facility fee codes for facilities, and the proposed fee amendment will consolidate them into just two. During the past year, over 14% of the facility applications were sent to the agency with an incorrect fee amount. This resulted in an overpayment or underpayment that required refunds to owners of \$14,568 - an inconvenience and expense to both the facility owner and the agency. Fee leveling and facility category consolidation will streamline facility registration and prevent confusion over the correct amount owed.

REGULATORY FLEXIBILITY ANALYSIS

All fee increases made by the Executive Council are in response to the special provisions written into every Appropriations Act, which states that designated regulatory agencies must collect sufficient fees, fines and other revenue to cover appropriations made to the agencies. If an agency fails to comply, its appropriations will be reduced to the amount collected. When provided additional revenue during a legislative session to maintain the protection and services required by its mission, the only way the Executive Council can comply with the Appropriations Act is to raise fees, or if given the option, demonstrate that the additional appropriations are covered by an overall increase of revenue; e.g., an expected increase in the licensee population or increase in number of annual renewals and applications.

The first alternative is to not increase fees at all, but instead to perform an analysis of potential revenue growth. The agency did this during the last biennium and was successful. However, there were different circumstances at the time that allowed that alternative; the agency required less revenue, unlike the current biennium.

The second option is to not raise fees at all. The consequences to the Executive Council under this option are as follows: The funds appropriated to the Executive Council for operations in the FY2010/2011 biennium will be reduced by \$129,185, or 6% of the General Revenue appropriated funds. This reduction will have a negative impact on agency operations and ability to perform its mission of licensing and regulating the professions of Physical Therapy and Occupational Therapy in Texas. Specific areas affected will be employee retention and efficiency, travel by board members and investigators, and information technology upgrades. The Executive Council did not want to take this option.

The third option is to increase fees on licensees instead. The last time fees were increased by the agency, a large number of "other" fees were increased, such as administrative fees. The long range plan for fee increases by the Executive Council is to avoid exclusively raising fees on a given sub-population (licensees, applicants, or facilities) of those regulated, and to balance the fee increases for each sub-population. When it must raise fees, the Executive Council tries to alternate between raising fees on licensee renewals and/or applications, other administrative fees, and then facility fees. Besides the benefit of multi-years between fee increases for each sub-population, this simplifies the fee increases and keeps changes to licensees, owners, and staff to a minimum. One option considered to address the need for increased agency funding was to increase fees on Physical Therapy and Occupational Therapy individual license renewals. This would result in an average fee increase of \$5 - \$8 per license renewal, dependent upon the type of license. The Executive Council did not take this course of action, due to the reasons given above.

Comments on the proposed amendments may be submitted to John Maline, Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: john.maline@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Executive Council of Physical Therapy and Occupational Therapy Examiners Practice Act, Title 3, Subtitle H, Chapter 452, Texas Occupations Code, which provides the Executive Council with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapters 452 - 454, Occupations Code is affected by the proposed amendments.

§651.1. Occupational Therapy Board Fees.

(a) Regular License.

- (1) Occupational Therapist--\$120.
- (2) Occupational Therapy Assistant--\$93.
- (3) Application to retake the certification exam, OT--\$25.
- (4) Application to retake the certification exam, OTA--\$25.

(b) Temporary License.

- (1) Occupational Therapist--\$70.
- (2) Occupational Therapy Assistant--\$55.

(c) Provisional License.

- (1) Occupational Therapist--\$80.

(2) Occupational Therapy Assistant--\$75.

(d) Active to Inactive Status.

(1) Occupational Therapist--a fee to equal one-half the renewal fee.

(2) Occupational Therapy Assistant--a fee to equal one-half the renewal fee.

(e) Inactive Status to Active Status.

(1) Occupational Therapist--a fee equal to the renewal fee.

(2) Occupational Therapy Assistant--a fee equal to the renewal fee.

(f) Renewal.

(1) Active.

(A) Occupational Therapist--\$217.

(B) Occupational Therapy Assistant--\$167.

(2) Inactive.

(A) Occupational Therapist--a fee equal to one-half the renewal fee.

(B) Occupational Therapy Assistant--a fee equal to one-half the renewal fee.

(g) Retired Status.

(1) Application--\$25.

(2) Renewal--\$25.

(h) Late Fees Renewal (all licensees).

(1) Late 90 days or less--the renewal fee plus late fee which is equal to one-half of the renewal [~~certification examination~~] fee.

(2) Late more than 90 days but less than one year--the renewal fee plus late fee which is equal to the renewal [~~certification examination~~] fee.

(i) License Restoration Fee for all licensees--a fee equal to the renewal [~~certification examination~~] fee.

(j) Registration Fees, All Facilities--\$215 [~~Facilities~~].

[(1) Registration of First Facility--\$314.]

[(2) Registration of Each Additional Facility--\$124.]

[(3) Registration of Linked Primary Facility--\$40.]

[(4) Registration of Linked Additional Facility--\$30.]

(k) Renewal Fees, All Facilities--\$215 [~~Facilities~~].

[(1) Renewal of Registration of First Facility--\$306.]

[(2) Renewal of Registration of Each Additional Site--\$126.]

[(3) Renewal of Linked Primary Facility--\$40.]

[(4) Renewal of Linked Additional Facility--\$30.]

(l) Late Fees--All Facilities.

(1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.

(2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.

(m) Facility Restoration (all facilities)--Late one year or more--renewal fee(s) plus a restoration fee which is double the renewal fee.

§651.2. Physical Therapy Board Fees.

(a) Application/Permanent License.

- (1) PT--\$170.
- (2) PTA--\$116.

(b) Application to Retake the Examination.

- (1) PT--\$25.
- (2) PTA--\$25.

(c) Temporary License.

- (1) PT--\$80.
- (2) PTA--\$60.

(d) Provisional License.

- (1) PT--\$80.
- (2) PTA--\$75.

(e) Active to Inactive License.

- (1) PT--a fee equal to one-half of the renewal fee.
- (2) PTA--a fee equal to one-half of the renewal fee.

(f) License Renewal.

- (1) Active license.
 - (A) PT--\$217.
 - (B) PTA--\$167.

(2) Inactive license. (Inactive license renewal fees are effective September 1, 2001)

- (A) PT--a fee equal to one-half of the renewal fee.
- (B) PTA--a fee equal to one-half of the renewal fee.

(g) Inactive to Active License (Reactivation).

- (1) PT--a fee equal to the renewal fee.
- (2) PTA--a fee equal to the renewal fee.

(h) Retired Status.

- (1) Application--\$25.
- (2) Renewal--\$25.

(i) Late Fees--Renewal (all licensees).

(1) Late 90 days or less--the renewal fee plus a late fee equal to one-half of the examination fee.

(2) Late more than 90 days but less than one year--the renewal fee plus a fee equal to the examination fee.

(j) License Restoration (all licensees, under the conditions set out in §341.6 of the Physical Therapy Board Rules)--a fee equal to the examination fee.

(k) Facility Registration, All Facilities--\$215.

- ~~[(1) First facility--\$314]~~
- ~~[(2) Additional site--\$124]~~

(l) Facility Renewal, All Facilities--\$215.

- ~~[(1) First facility--\$306]~~

~~[(2) Additional site--\$126]~~

(m) Late Fees--All Facilities.

(1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.

(2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.

(n) Facility Restoration (all facilities)--renewal fee(s) plus a restoration fee that is double the renewal fee.

§651.3. Administrative Services Fees.

(a) Verification/Transfer of Licensure--\$50.

(b) Duplicate/Replacement License--\$30.

(c) Duplicate Renewal Certificate/Wallet Card--\$30.

(d) Duplicate of Facility Registration Certificate--\$30.

(e) Reinstatement of Suspended or Revoked License--\$50.

(f) Insufficient Funds Check Fee--\$25.

(g) ACH Return Fee--\$25.

(h) Pre-Licensure Approval Letter--\$50.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904158

John Maline

Executive Director

Executive Council of Physical Therapy and Occupational Therapy Examiners

Proposed date of adoption: January 1, 2010

For further information, please call: (512) 305-6900



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER O. TEXAS COMMERCIAL LINES STATISTICAL PLAN

28 TAC §5.9501

The Texas Department of Insurance proposes new Subchapter O, §5.9501, concerning the Texas Commercial Lines Statistical Plan (Plan). The proposed new section adopts by reference an updated Plan, effective January 1, 2010.

The Plan proposed to be adopted by reference in the new section incorporates the same requirements and current reporting instructions for the reporting of commercial lines insurance premium and loss data to the Department as the existing Plan, with the exception of the reporting of fidelity and surety experience data. Because the current Plan was adopted in 1995, it is nec-

essary to (i) update obsolete reporting instructions; (ii) update the Insurance Services Office (ISO) copyright notice to reflect the change from the adoption of the Plan pursuant to Articles 5.96 and 5.97 of the Insurance Code to Chapter 38, Subchapter E of the Insurance Code; (iii) update effective dates; and (iv) remove provisional instructions pertaining to the 1995 transition to the Plan. It is necessary, however, to retain the 1995 reporting instructions in the Run-Off Reporting Rule for each line in the event that a policy with a retrospective adjustment prior to 1995 needs to be reported. Additionally, it is necessary to delete the current transmittal form and affidavit, as well as the related instructions. This is necessary because insurers report this information on the designated statistical agent's forms, and the current transmittal form and affidavit are no longer viable. It is also necessary to update reporting media because technological advances have rendered diskettes obsolete in favor of CDs and DVDs as media storage mediums. Also, minor changes have been made throughout the Plan to correct misspelled words and erroneous punctuation and to change the references to "manual" to "Plan" for internal consistency. These changes will assist in understandability and ease of use.

The proposed changes to the fidelity and surety premium and loss experience reporting are for the purpose of standardizing the manner in which fidelity and surety insurers report premium and loss experience. These changes consist of the updating of certain coverage and class fields and codes. Pursuant to the Plan, all insurers writing direct fidelity and surety business in the State of Texas are required to submit a quarterly report of premium and loss experience. Some of the fields and codes contained in the Quarterly Fidelity and Surety Experience Report of the Plan are not consistent with the standard fields and codes utilized by fidelity and surety insurers to submit premium or loss experience data in other states. As a result, insurers are required to maintain two separate systems for tracking premium and loss experience data—one for Texas and one for the rest of the country.

The proposed revisions to the Quarterly Fidelity and Surety Experience Report of the Plan reflect the fields and codes used for reporting premium or loss experience in other states. Adopting standard fields and codes will eliminate the need for fidelity and surety insurers to maintain two separate databases and should, as a result, lower compliance costs, as well as allow for better experience comparison by the Department, the designated statistical agent, and the industry in general.

The Plan was adopted under the procedures outlined in Articles 5.96 and 5.97 of the Insurance Code effective January 1, 1995, for mandatory use by all insurers writing commercial lines insurance in Texas. As a result of subsequent amendments to Article 5.97, which provide that Article 5.97 no longer applies to certain lines of insurance, it is necessary to propose and adopt the Plan under the Administrative Procedure Act, Government Code Chapter 2001.

The Insurance Code §38.202 provides that the Commissioner of Insurance (Commissioner) may, for a line or sub-line of insurance, designate or contract with a qualified organization to serve as the statistical agent for the Commissioner to gather data relevant for regulatory purposes. The Insurance Code §38.204(a) provides that a designated statistical agent shall collect data from reporting insurers under a statistical plan adopted by the Commissioner. The Insurance Code §38.205 requires insurers to provide all premium and loss cost data to the Commissioner or the designated statistical agent as the Commissioner or agent

requires. The Insurance Code §38.207 authorizes the Commissioner to adopt rules necessary to accomplish the purposes of the subchapter regarding statistical data collection.

Proposed §5.9501(a) sets forth the purpose and applicability of the proposed new section. Proposed §5.9501(a)(1) specifies the purpose of the proposed section, which is to establish requirements for the reporting of premium and loss data by direct commercial lines insurers pursuant to the Insurance Code Chapter 38, Subchapter E. Proposed §5.9501(a)(2) specifies that, pursuant to the Insurance Code §38.202, the Commissioner has designated a statistical agent for commercial lines of insurance. Proposed §5.9501(a)(3) requires that, pursuant to the Insurance Code §38.205, all insurers writing direct commercial lines business in the State of Texas must provide a report of their premium and loss cost experience to the Commissioner or the statistical agent designated under the Insurance Code §38.202. Proposed §5.9501(a)(3) further requires that the report must comply with the reporting requirements and instructions specified in the Plan, which is adopted by reference pursuant to proposed §5.9501(b).

Proposed §5.9501(a)(4) mandates that the proposed section applies to all reports required under the section filed with the Department for reporting periods beginning on or after January 1, 2010.

Under §5.9501(b), the Plan is proposed to be adopted by the Commissioner by reference, effective January 1, 2010. Proposed §5.9501(b) also provides that the Plan is published by the Department and is available from the Data Services Division, Mail Code 105-5D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or the department website at www.tdi.state.tx.us.

FISCAL NOTE. Gary Gola, Director of Data Services for the Property and Casualty Program, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Gola also has determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits will be an updated Plan (i) that no longer contains obsolete effective dates, reporting instructions, provisional instructions pertaining to the 1995 transition to the Plan, and an obsolete Insurance Services Office (ISO) copyright notice; and (ii) that provides for updated media storage options. These changes will result in greater ease of use and readability of the Plan. Additionally, other anticipated public benefits include standardized fields and codes for the reporting of fidelity and surety premium and loss experience, which will eliminate the need for fidelity and surety insurers to maintain two separate databases, possibly lower compliance costs, and allow for better experience data comparison by the Department, the designated statistical agent, and the industry in general.

Analysis of Potential Costs for Persons Required to Comply with the Proposal Proposed Amendments to Existing Plan except Quarterly Fidelity and Surety Experience Report. The Department does not anticipate any additional costs to insurers required to comply with the proposed section as a result of the elimination of the obsolete information and the adoption of all parts of the Plan except the Quarterly Fidelity and Surety Experience Report. The proposed amendments include changes related to (i) replacement of obsolete reporting instructions, obsolete effective

tive dates, and the provisional instructions pertaining to the 1995 transition to the Plan, with up-to-date information; (ii) updating of the ISO copyright notice to reflect the change from the adoption of the Plan pursuant to Articles 5.96 and 5.97 of the Insurance Code to Chapter 38, Subchapter E of the Insurance Code; and (iii) provision for use of updated reporting media, including CDs and DVDs.. These proposed amendments do not impose any additional requirements to those in the current Plan. The proposed amendments simply update obsolete information.

Proposed Amendments to Quarterly Fidelity and Surety Experience Report. The probable economic costs to each fidelity and surety insurer required to comply with the requirements of the proposed amendments to the Quarterly Fidelity and Surety Experience Report of the Plan will vary based on the methods of reporting of fidelity and surety experience data currently utilized by a particular insurer. Some insurers, either as a result of their Surety & Fidelity Association of America (SFAA) membership or reporting data to other states, already utilize the proposed fields and codes for the reporting of their premium and loss experience data.

Insurers already utilizing proposed fields and codes. Of the estimated 118 insurers writing direct fidelity business in Texas and the estimated 190 insurers writing direct surety business in Texas, an estimated 98 fidelity insurers and 153 surety insurers are members of the SFAA. As members of the SFAA, these insurers already utilize the proposed fields and codes for the reporting of their premium and loss experience data to the SFAA. However, some of these insurers may currently maintain one database for the reporting of fidelity and surety experience data pursuant to the current Plan for Texas and another database for the rest of the country. For any insurers who currently maintain two such databases, the Department has determined that the potential costs of compliance with the proposed Quarterly Fidelity and Surety Experience Report of the Plan will be associated with the consolidation of the two systems for tracking premium and loss experience data into a single system. The types of costs related to this consolidation will be primarily computer programming costs. These costs will vary by insurer and will depend on each insurer's existing data systems, existing staff, the number of fidelity and/or surety policies in-force, and the type of data already captured. Though each insurer has the information needed to estimate its individual costs, the Department estimates that to analyze and consolidate an insurer's current data systems, the insurer may need the services of programmers, software engineers, database managers, and computer support staff. While it is not feasible to determine the actual cost of such employees and the actual amount of time that will be needed for such employees for each individual insurer, the Texas Workforce Commission's Labor Market & Career Information Department's *2008 Texas Statewide Wages, Occupational Employment Statistics Program* indicates that the average hourly wages for these professions are \$37.28 for a computer programmer, \$42.98 for a computer software applications engineer, \$43.50 for computer software systems engineers, \$32.99 for a database administrator, and \$21.60 for computer support staff. The actual number, types, and cost of personnel will be determined by the insurer's existing data systems and staffing. The Department anticipates that because of the consolidation of reporting systems the proposed Plan may actually lower compliance costs for these insurers. This is because insurers will no longer need to maintain two separate databases and will no longer incur costs associated with such maintenance.

There are also an estimated 20 fidelity insurers and 37 surety insurers writing direct business in the State of Texas that are not members of the SFAA. Of these, 13 insurers utilize SFAA as their fidelity and/or surety statistical filing agent outside of Texas. While these 13 non-member insurers may utilize the fields and codes contained in the current Plan for the reporting of experience data in Texas, they also already utilize the proposed fields and codes for the reporting of their premium and loss experience data outside of Texas. The Department has also determined that the potential costs of compliance with the proposed Quarterly Fidelity and Surety Experience Report of the Plan for these insurers will be associated with the consolidation of the Texas system and the system for the rest of the country for tracking premium and loss experience data into a single system. The Department anticipates that the same cost analysis as used for SFAA members (indicated in the preceding paragraph) to consolidate two separate systems for tracking premium and loss experience data into a single system will apply to these insurers also.

Insurers not utilizing proposed fields and codes. The Department's analysis of the potential costs of compliance with the proposed amendments to the Quarterly Fidelity and Surety Experience Report of the Plan for insurers that do not currently utilize the proposed fields and codes is based on the following considerations. Each insurer's costs of compliance will vary, depending on the insurer's existing data systems, existing staff, the number of fidelity and/or surety policies, and the type of data already captured. Each insurer may have to update its current database tracking premium and loss experience with the proposed fields and codes. Though each insurer has the information needed to estimate its individual costs, the Department estimates that to analyze and update an insurer's current data system, the insurer may need the services of programmers, software engineers, database managers, and computer support staff. The same hourly wages indicated in this Public Benefit/Cost Note part for the SFAA-member cost analysis will apply to these insurers. The actual number, types, and cost of personnel will be determined by the insurer's existing data systems and staffing.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

The Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(a)(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(a)(1) defines "micro business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

Proposed Amendments to the Existing Plan except Quarterly Fidelity and Surety Experience Report. In accordance with the Government Code §2006.002(c), the Department has deter-

mined that the proposed update and adoption of all parts of the Plan except the Quarterly Fidelity and Surety Experience Report will not have an adverse economic effect on small or micro businesses that are required to comply with the proposal. As explained in the Public Benefits/Cost Note part of this proposal, the proposed amendments to the Plan simply update obsolete information and do not impose any additional requirements or costs to those in the current Plan with which insurers, regardless of size, must comply. The proposed amendments include changes related to (i) replacement of obsolete reporting instructions, obsolete effective dates, and the provisional instructions pertaining to the 1995 transition to the Plan, with up-to-date information; (ii) updating of the ISO copyright notice to reflect the change from the adoption of the Plan pursuant to Articles 5.96 and 5.97 of the Insurance Code to Chapter 38, Subchapter E of the Insurance Code; and (iii) provision for use of updated reporting media, including CDs and DVDs. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

Proposed Amendments to the Quarterly Fidelity and Surety Experience Report. The Department estimates that the proposed update of the Quarterly Fidelity and Surety Experience Report may have an adverse economic impact on three fidelity and surety insurers that qualify as small or micro businesses under the Government Code §2006.001(a)(1) and (2) and that are required to comply with the proposal. The only adverse economic impact of the proposal anticipated by the Department on these three insurers are the additional costs associated with the consolidation of the two systems for tracking premium and loss experience data into a single system or with the updating of current databases tracking premium and loss experience with the proposed fields and codes. The types of costs related to the proposal will be primarily computer programming costs. The Department's cost analysis in the Public Benefit/Cost Note portion of this proposal is equally applicable to those fidelity and surety insurers that qualify as small or micro businesses under the Government Code §2006.001(a)(1) and (2). As previously indicated, the total actual costs for each insurer, regardless of size, will vary depending on each insurer's existing data systems, existing staff, the number of fidelity and/or surety policies in-force, and the type of data already captured.

In accordance with the Government Code §2006.002(c-1), the Department has considered other regulatory methods to accomplish the objectives of the proposal and the statute that is being implemented that will also minimize any adverse impact on the insurers that qualify as small or micro businesses.

The Insurance Code §38.202 provides that the Commissioner may, for a line or sub-line of insurance, designate or contract with a qualified organization to serve as the statistical agent for the Commissioner to gather data relevant for regulatory purposes. The Insurance Code §38.205 requires insurers to provide all premium and loss cost data to the Commissioner or the designated statistical agent as the Commissioner or agent requires. The primary objective of the Insurance Code Chapter 38, Subchapter E is to allow for the collecting of commercial lines data, including fidelity and surety lines data, for analysis and comparison of the insurers' premium and loss experience by the Department, the designated statistical agent, and the industry in general. This includes data from insurers that qualify as a small or micro business under the Government Code §2006.001(a)(1) and (2). The objective of the proposed revisions to the Quarterly Fidelity and Surety Experience Report is to establish a standardized method of collecting fidelity and surety premium and loss experience

data by utilizing the fields and codes used for reporting such data in other states.

The other regulatory methods considered by the Department to accomplish the objectives of the proposal and to minimize any adverse impact on the three insurers that qualify as small or micro businesses under the Government Code §2006.001(a)(1) and (2) are: (i) not adopting the proposed revisions to the data fields and codes in the Quarterly Fidelity and Surety Experience Report and (ii) implementing different requirements or standards for the insurers that qualify as small or micro businesses.

Not adopting the proposed amendments to the Quarterly Fidelity and Surety Experience Report. If the proposed revisions to the Quarterly Fidelity and Surety Experience Report were not adopted, fidelity and surety insurers, regardless of size, would still be required to submit a quarterly report on premium and loss experience data pursuant to the current Plan, which was adopted in 1995. The insurers would be required to utilize some fields and codes that would be inconsistent from those used for reporting premium or loss experience in other states. This would result in some insurers being required to continue to maintain two separate systems for tracking premium and loss experience data—one for Texas and one for the rest of the country. This could result in higher compliance costs than is necessary for these insurers. Not adopting the revised fields and codes could also hinder accurate and meaningful premium and loss experience comparison by the Department, the designated statistical agent, and the industry in general. The Department's interpretation of the Insurance Code Chapter 38, Subchapter E is that the purpose of the statute is to ensure accurate and meaningful premium and loss experience comparison of the various commercial lines of insurance written in Texas as needed for regulatory purposes. This includes the fidelity and surety insurance lines. The Department, therefore, has rejected the approach of not adopting the proposed amendments to the Fidelity and Surety Experience Report of the Plan because the Department does not believe that it would accomplish the objective of the statistical data collection statute (Insurance Code Chapter 38, Subchapter E) and, therefore, would not be consistent with legislative intent.

Implementing different requirements or standards for fidelity and surety insurers that qualify as small and micro businesses. Another regulatory alternative considered by the Department was implementing different requirements or standards for fidelity and surety insurers that qualify as small or micro businesses under the Government Code §2006.001(a)(1) and (2). While this approach would quite possibly not result in an adverse economic impact on small or micro insurers, it would hinder the ability of the Department and Department's statistical agent to collect consistent and meaningful premium and loss experience data for the fidelity and surety insurance lines in Texas. Because the fidelity and surety insurance business in Texas written by all insurers of any size is relatively small, the premium and loss experience data gathered from insurers that qualify as small or micro businesses is considered by the Department to be statistically significant. Therefore, the exemption of the small or micro insurers from the proposed data requirements for the larger insurers writing fidelity and surety business in Texas could result in a distortion of the premium and loss experience data. Additionally, implementing different requirements or standards for insurers that qualify as small or micro businesses and that already utilize the proposed fields and codes for the reporting of premium and loss experience data will not allow these insurers to consolidate their reporting systems and, thus, lower their compliance costs. The

Department, therefore, has rejected this approach as a viable regulatory alternative.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 2, 2009, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Gary Gola, Director, Data Services, Property and Casualty Program, Mail Code 105-5D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new section is proposed pursuant to the Insurance Code §§38.202, 38.204(a), 38.205, 38.207, and 36.001. Section 38.202 provides that the Commissioner of Insurance (Commissioner) may, for a line or sub-line of insurance, designate or contract with a qualified organization to serve as the statistical agent for the Commissioner to gather data relevant for regulatory purposes. Section 38.204(a) provides that a designated statistical agent shall collect data from reporting insurers under a statistical plan adopted by the Commissioner. Section 38.205 requires insurers to provide all premium and loss cost data to the Commissioner or the designated statistical agent as the Commissioner or agent requires. Section 38.207 authorizes the Commissioner to adopt rules necessary to accomplish the purposes of the subchapter regarding statistical data collection. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Insurance Code §§38.202, 38.204(a), 38.205, and 38.207

§5.9501. Texas Commercial Lines Statistical Plan.

(a) Purpose and Applicability.

(1) The purpose of this section is to establish requirements for the reporting of premium and loss data by direct commercial lines insurers pursuant to the Insurance Code Chapter 38, Subchapter E.

(2) Pursuant to the Insurance Code §38.202, the commissioner has designated a statistical agent for commercial lines of insurance.

(3) Pursuant to the Insurance Code §38.205, all insurers writing direct commercial lines business in the State of Texas are required to provide a report of their premium and loss cost experience to the commissioner or the statistical agent designated under the Insurance Code §38.202. The report must comply with the reporting requirements and instructions specified in the Texas Commercial Lines Statistical Plan adopted by reference pursuant to subsection (b) of this section.

(4) This section applies to all reports required under this section filed with the department for reporting periods beginning on or after January 1, 2010.

(b) Adoption by reference. The commissioner adopts by reference the Texas Commercial Lines Statistical Plan effective January 1, 2010. This document is published by the Texas Department of Insurance and is available from the Data Services Division, Mail Code 105-5D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or the department website at www.tdi.state.tx.us.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904159

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.13, §53.16

The Texas Parks and Wildlife Department (the department) proposes amendments to §53.13, concerning Business License and Permits (Fishing), and §53.16, concerning Vessel, Motor, and Marine Licensing Fees.

The proposed amendment to §53.13 would implement fees for a subcategory of fishing guide license, the recently created resident and nonresident paddle craft all-water fishing guide licenses. The proposed fee for the new licenses is \$200, which is identical to the fee currently in effect for all-water fishing guide licenses.

The proposed amendment to §53.16 would reduce the fee for the Marine Dealer, Distributor, and Manufacturer's license/license transfer from \$525 to \$500. In May of 2009, the commission adopted a wide range of fee increases. The Marine Dealer, Distributor, and Manufacturer's license fee was included but should not have been, because Parks and Wildlife Code, §31.041(e), establishes a fee of \$500 for that license and the commission does not have the authority to increase, reduce, or eliminate that fee. The proposed amendment is necessary to comply with the statute. The department has not imposed the higher fee on any license buyer.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed

are in effect, there could be fiscal implications for state government as a result of administering or enforcing the proposed amendment to §53.13. The effect of the creation of the paddle craft all-water fishing guide licenses is to create subcategories out of the current single category of persons who are required to purchase a fishing guide license if they wish to engage in the business of being a fishing guide. However, there may be persons who have until now chosen not to engage in the business of being a fishing guide because they are unwilling or unable to obtain the required U.S. Coast Guard Operator's License. The department cannot determine how many currently unlicensed persons might purchase a paddle craft all-water fishing guide license; however, it is expected to be fewer than ten but could be more. Therefore, assuming that ten nonresident licenses are purchased each year, the fiscal impact to the department would be an increase of \$10,000 in revenue per year. Any combination of resident and nonresident licenses totaling ten will result in less than \$10,000 of revenue per year.

There will be no fiscal implications for other units of state or local government as a result of the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be rules that accurately reflect the types of licenses sold by the department and the fees for them.

There will be no additional economic costs for persons required to comply with the rules as proposed. Under Parks and Wildlife Code, Chapter 47, no person may engage in business as a fishing guide unless the resident has obtained a fishing guide license; thus, the proposed amendment does require anyone to obtain a license who is not currently required to obtain a license.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed amendment to §53.13 will not have an adverse economic effect on small businesses or micro-businesses. The department believes that there is a high probability that most if not all persons likely to seek licensure for doing business as a paddle craft fishing guide under the new licenses would qualify as small or micro-businesses. The department estimates that ten or fewer small or micro-businesses would be affected by the proposed rules. However, the department has determined that the rule as proposed will likely result in positive economic impacts to small businesses and micro-businesses. Businesses that currently have the All-Water Fishing Guide license will not be required to obtain the new Paddle Craft All-Water Fishing Guide license and thus will not be impacted by the proposed rule. However, a person or business who currently has an All-Water Fishing Guide license, but wishes to

provide fishing guide services only by paddle craft will no longer be required to obtain a United States Coast Guard (USCG) Operator of an Uninspected Passenger Vessel (OUPV) license. To obtain a Paddle Craft All-Water Fishing Guide license under the proposed rule, a Texas resident would be required to pay approximately \$745, which consists of the \$200 fee for licensure, approximately \$45 for CPR/First Aid certification, and approximately \$500 for the required kayak/canoe certifications. However, the USCG OUPV, which currently costs \$1,110 would not be required. The fee for the resident Paddle Craft All-Water Fishing Guide license is the same as the fee for the resident All-Water Fishing Guide license, \$200. Therefore, the cost savings for a resident providing paddle craft fishing guide services would be approximately \$565/year. For nonresidents wishing to guide by paddle craft only, the probable direct economic cost of compliance would be approximately \$1,545, which consists of the \$1,000 fee for licensure (proposed elsewhere in this issue), approximately \$45 for CPR/First Aid certification, and approximately \$500 for the required kayak/canoe certifications. The fee for the nonresident Paddle Craft All-Water Fishing Guide license is the same as the fee for the nonresident All-Water Fishing Guide license, \$1,000. Therefore, the cost savings for a nonresident providing paddle craft fishing guide services would be approximately \$555/year. As a result, the rule as proposed will not have an adverse impact on small or micro-businesses.

The department considered several alternatives to the rule as proposed, including leaving the current rule in place and forgoing any requirements for first-aid, safety, or boat handling training. The alternative of leaving the current rule in place was rejected because it would defeat the goal of the rule, which is to remove regulatory barriers to people who wish to engage in the fishing guide business from paddle-powered craft without having to meet requirements pertaining to the use of motorized boats. The alternative to eliminate first-aid, safety, or boat handling training was rejected because the department believes that persons operating as fish guides in public water from paddle craft should not be subject to less stringent requirements relating to safety than guides operating from motorized craft.

The department has determined that the proposed amendment to §53.16 will not have an adverse economic effect on small businesses or micro-businesses; therefore, the department has not prepared an economic impact statement and a regulatory flexibility analysis for that amendment.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §47.004 and §47.005, which authorize the commission to adopt rules governing the issuance and use of a resident and nonresident fishing guide licenses, respectively, including rules creating separate resident fishing guide licenses for use in saltwater and freshwater; and under Parks and Wildlife

Code, §31.041(e), which establishes a fee of \$500 for a marine dealer's, distributor's or manufacturer's license.

The proposed amendment affects Parks and Wildlife Code, Chapters 31 and 47.

§53.13. Business License and Permits (Fishing).

(a) Licenses. The fee amounts prescribed in paragraphs (1) - (4) of this subsection reflect the total fee paid by the purchaser and include the surcharges established in subsection (b) of this section.

(1) - (10) (No change.)

(11) resident all-water fishing guide--\$210; [~~and~~]

(12) resident paddle craft all-water fishing guide--\$200;

(13) [~~(12)~~] non-resident all-water fishing guide--\$1,050₂ and[-]

(14) non-resident paddle craft all-water fishing guide--\$1,000.

(b) - (c) (No change.)

§53.16. Vessel, Motor, and Marine Licensing Fees.

(a) - (c) (No change.)

(d) Marine dealer/distributor/manufacturer fees:

(1) marine dealer, distributor or manufacturer license (includes licensee validation card (with decal) for recreational purposes or participation in contests or events)--\$500 [~~\$525~~];

(2) marine dealer, distributor or manufacturer ownership transfer of license--\$500 [~~\$525~~];

(3) - (6) (No change.)

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904160

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 389-4775



CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER K. INTERSTATE WILDLIFE VIOLATOR COMPACT

31 TAC §55.675

The Texas Parks and Wildlife Department (the department) proposes new §55.675, concerning Interstate Wildlife Violator Compact.

The 81st Texas Legislature (2009) enacted House Bill 3391 (H.B. 3391). Section 16 of H.B. 3391 amended the Parks and Wildlife Code by adding new Chapter 92, which authorizes the commission, on behalf of the state, to enter into the Interstate Wildlife Violator Compact (IWVC), a multi-state compact that allows mem-

ber states to share information about wildlife violators and to deny licensure to persons who have failed to comply with conservation law in member states.

The terms of §16 of H.B. 3391 authorize the commission to take all actions necessary to implement the provisions of §16, including the adoption of rules and the delegation of authority to the director. Section 16 of H.B. 3391 also authorizes the commission, if necessary to protect the interests of this state, to withdraw from the Interstate Wildlife Violator Compact in accordance with the terms of the compact.

The proposed new rule would direct the executive director of the department to enter into and/or withdraw from the Compact; appoint a Compact administrator to serve as Texas' representative on the board of Compact administrators; refuse to issue a license, tag or permit; receive information from and provide information to other member states; process nonresident violators who are residents of other member states; establish policies and procedures to implement the terms of the Compact; and, take other action as necessary to carry out the terms of the Compact. The proposed provisions are necessary for the department to participate in the IWVC according to its terms, as permitted and authorized under the terms of §16 of H.B. 3391.

Major David Sinclair, Chief of Fisheries and Wildlife Enforcement, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule other than those addressed in the fiscal note to H.B. 3391.

Major Sinclair also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the deterrent effect of the denial of license privileges for persons who have not complied with conservation law in any jurisdiction affected by the Compact.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Major David Sinclair, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4854, e-mail: david.sinclair@tpwd.state.tx.us.

The new rule is proposed under the authority of Parks and Wildlife Code, Chapter 92, which authorizes the commission, on

behalf of the state, to enter into the IWVC and to take all actions necessary to implement the chapter, including the adoption of rules and the delegation of authority to the director.

The proposed new rule affects Parks and Wildlife Code, Chapter 92.

§55.675. Interstate Wildlife Violator Compact.

The Texas Parks and Wildlife Commission expresses support for the Interstate Wildlife Violator Compact (Compact) and hereby directs the executive director of the department to enter into the Compact on behalf of the state of Texas. As provided by the terms of the Compact, and in the manner specified by the Compact, the director or the director's designee may:

- (1) enter into the Compact and/or withdraw from the Compact;
- (2) appoint a Compact administrator to serve as Texas' representative on the board of Compact administrators;
- (3) refuse to issue a license, tag or permit;
- (4) receive information from and provide information to other member states;
- (5) process nonresident violators who are residents of other member states; and
- (6) establish policies and procedures to implement the terms of the Compact and this section.
- (7) take other action as necessary to carry out the terms of the Compact.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904162

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 389-4775



CHAPTER 57. FISHERIES

SUBCHAPTER B. MUSSELS AND CLAMS

31 TAC §57.157

The Texas Parks and Wildlife Department (the department) proposes an amendment to §57.157, concerning Mussels and Clams. The proposed amendment would alter §57.157(a) to clarify that mussel or clam species listed as threatened or endangered under 31 TAC Chapter 65, Subchapter G, may not be harvested recreationally or commercially, except as provided by Parks and Wildlife Code, Chapter 67, and 31 TAC Chapter 65, Subchapter G.

Under §65.171(b), no person may take, possess, propagate, transport, import, export, sell, or offer for sale any species of fish or wildlife listed as a threatened species. The proposed amendment is necessary to prevent confusion.

Mr. Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be clarity in the department's regulations governing threatened and endangered species.

There will be no adverse economic effect on persons required to comply with the amendment as proposed.

The department has determined that small or micro-businesses will not be affected by the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, Chapter 67, which requires the department to develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully and requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed rule affects Parks and Wildlife Code, Chapters 67.

§57.157. Mussels and Clams.

(a) General prohibition.

(1) It is unlawful for any person to take or possess mussels and clams except as provided under this subchapter.

(2) The take, possession, sale, or offering for sale of any species of mussel or clam listed in §65.175 of this title (relating to Threatened Species) or §65.176 of this title (relating to Endangered Species) is prohibited, except as provided by Parks and Wildlife Code, Chapter 67 or 31 TAC Chapter 65, Subchapter G.

(b) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904161



CHAPTER 65. WILDLIFE

SUBCHAPTER G. THREATENED AND ENDANGERED NONGAME SPECIES

31 TAC §65.175

The Texas Parks and Wildlife Department (the department) proposes an amendment to §65.175, concerning Threatened Species. The proposed amendment would add 15 species of freshwater mussels to the list of threatened species.

Mussels are an important component of healthy aquatic ecosystems, both as a food source for many other aquatic and terrestrial organisms, and as an important indicator species. In early life stages, mussels are food sources for a variety of aquatic insects, small fishes, and water birds; as they mature they become significant food sources for larger fishes, waterfowl, and terrestrial animals. Protection of this resource will preserve and enhance the hunting, fishing, and outdoor recreation opportunities that are part of Texas' heritage.

Freshwater mussel populations have declined throughout North America. They are sensitive to disturbance because they are relatively immobile organisms, sometimes staying in a single spot for their entire lives. They have a complex life cycle that is easily disrupted, causing reproductive failure. Habitat alteration and loss, illegal and over harvesting, and competition from introduced species are some of the factors in their decline. Mussels are extremely sensitive to toxic substances, since they encounter toxins more immediately than most organisms above them in the food chain and at higher concentrations relative to body mass. Minute levels of some types of toxic substances (e.g., ammonia) or chronic environmental stresses such as low oxygen levels or siltation caused by bed scouring can quickly devastate mussel communities, in many cases long before the environmental change is reflected by other aquatic species.

Nationwide, more species of freshwater mussels are listed as threatened and endangered than any other group of animals. Of the nearly 300 mussel species known to have lived in the U.S., 18 are believed to be extinct, and 60 are currently listed as federally endangered or threatened, including one species occurring in Texas (the Ouachita rock-pocketbook mussel). Texas is home to more than 50 species of freshwater mussels.

The department has identified 15 species of freshwater mussels that meet the department's criteria for listing as threatened species by virtue of being habitat-limited, and known to occur only in specific, limited geographical areas, and by virtue of being rare. The species proposed for listing are:

1. False spike (*Quadrula mitchelli*). The false spike is known from only two disjunct populations, one in central Texas and the other in the Rio Grande drainage. Nearly all records of this mussel from the Rio Grande are of subfossil and fossil specimens. The only evidence that the species may still persist in Texas was the discovery of recently dead specimens in the lower San Marcos River in 2000 (Howell 2001b). Several subsequent survey

efforts have failed to produce additional evidence of live false spikes in the aforementioned river.

2. Golden orb (*Quadrula aurea*). The golden orb is endemic to the Guadalupe-San Antonio and Nueces-Frio systems. Only seven extant populations of this mussel have been noted from the upper and central Guadalupe River, central San Antonio River, lower San Marcos River, and Lake Corpus Christi (Howells 2006; Burlakova and Karatayev 2008). Surveys conducted over the past 20 years have failed to locate any additional populations of the golden orb. The species' limited distribution makes it particularly susceptible to decline as a result of habitat degradation and reduced flow levels. Four golden orb populations are downstream from a rapidly expanding urban center (San Antonio) with a fifth population dependent on an aquifer impacted by municipal water demands (Howells 2009). NatureServe (an international network of biological inventories and conservation data centers-operating in all 50 U.S. states, Canada, Latin America and the Caribbean) ranks the golden orb as critically imperiled across its range.

3. Louisiana Pigtoe (*Pleurobema ridellii*). Louisiana Pigtoe ranged from eastern Texas drainages into Louisiana (Howells et al. 1996; Howells et al. 1997; Vidrine 2008). The species is currently listed as a species of concern in Louisiana. Louisiana pigtoe was once more numerous in Texas waters (R.G. Howells unpublished database), but has been exceptionally rare in recent decades. Since the mid-1990s, small numbers of living specimens have been found in the Neches River (Howells 2006), Village Creek, a Neches River tributary in Hardin County (Bordelon and Harrel 2004; Howells 2006; Karatayev and Burlakova 2007a), and the Angelina River (Karatayev and Burlakova 2007a). In all cases, only a few living individuals have been found at any given time; no large populations are known to occur anywhere in Texas (Howells 2009). NatureServe ranks the Louisiana pigtoe as critically imperiled across its range.

4. Mexican fawnsfoot (*Truncilla cognate*). The Mexican fawnsfoot is endemic to the central Rio Grande drainage. Live specimens of this mussel were collected near Del Rio in 1972. Following that discovery, additional living Mexican fawnsfoot would not be observed for another 30 years. In 2003, a single live Mexican fawnsfoot was located near Laredo, followed by one additional specimen in the area some weeks later (Howells 2007), and the eventual collection of five others in 2008 (Burlakova and Karatayev 2008). Mussel surveys and collections throughout the Rio Grande drainage since 1972 have failed to produce any additional living specimens, even at sites where the species had been previously recorded. Extensive historical and current environmental modifications along the Rio Grande of Texas and Mexico suggest any surviving populations are likely at risk (Howells 2004). NatureServe ranks the Mexican fawnsfoot as critically imperiled across its range.

5. Salina mucket (*Potamilus metnecktayi*). The Salina mucket, endemic to the central Rio Grande drainage, has potentially been extirpated from its range in New Mexico and Mexico and undergone dramatic declines in Texas (Howells 2009). The Salina mucket has a very limited distribution in Texas with live specimens found only from the southern-most point of Big Bend to the mouth of the Pecos River (Howells 2006). This stretch of river has experienced major silt deposition in recent years and is at risk of dewatering associated with flow restrictions in Mexican rivers upstream. Elsewhere in the Rio Grande and its tributaries, including those in Mexico, only dead shell material has been found in recent decades with no indication of existing

populations (Howells 2001a). NatureServe ranks the Salina mucket as critically imperiled across its range.

6. Sandbank pocketbook (*Lampsilis satura*). The sandbank pocketbook is known from southern portions of the Mississippi interior basin and western Gulf drainages of Arkansas, Mississippi, Louisiana, and Texas. The species is considered rare in all states from which it has been recorded. The only significant population of this mussel known to exist in Texas was from the central Neches River. However, a gravel bar where this population was centered has been lost (Howells 2009). Small numbers of individuals remain in the Sabine and tributaries of the Neches (Ford and Nicholson 2006; Howells 2006; Karatayev and Burlakova 2007a, Karatayev and Burlakova 2007b; Randklev and Kennedy 2008), but abundances at these sites have declined dramatically and there is only limited evidence of successful reproduction. NatureServe ranks the sandbank pocketbook as imperiled across its range.

7. Smooth pimpleback (*Quadrula houstonensis*). This endemic mussel is restricted to the Colorado and Brazos River drainages. In the Colorado River, the smooth pimpleback's distribution has historically been restricted to the Highland Lakes area downriver to Colorado and Wharton Counties. Shell material has been documented in the Brazos basin as far upriver as Shackelford and Young Counties and downstream at least as far as Fort Bend County. Surveys conducted from 1980 to 2006 have noted steep declines in the number of extant populations in both river systems (Howells 2009). Recent surveys of the Colorado River system failed to locate surviving populations of the smooth pimpleback (Howells 2009). At present, the Brazos River drainage hosts the only surviving populations of this freshwater mussel (Karatayev and Burlakova 2007b; Randklev and Kennedy 2008; Howells 2009). NatureServe ranks the smooth pimpleback as imperiled across its range.

8. Southern hickorynut (*Obovaria jacksoniana*). Distributed across a wide swath of the southern United States, the southern hickorynut is considered rare and a species of conservation concern in seven states (Oesch 1984; Williams et al. 1993; Harris et al. 1997; Parmalee and Bogan 1998; Garner et al. 2004). This mussel species has never been abundant in Texas, with most in-state collections made prior to the mid-1980s. The only recent observation of southern hickorynut in Texas was made in Village Creek in 2001-2002 (Bordelon and Harrel 2004). Subsequent surveys of Village Creek have failed to produce any additional specimens of this species (Howells 2006; Karatayev and Burlakova 2007a). The southern hickorynut appears to have been lost elsewhere in the state and, if the species still occurs in Texas at all, may only persist at the Village Creek site. NatureServe ranks the southern hickorynut as imperiled across its range.

9. Texas fatmucket (*Lampsilis bracteata*). The Texas fatmucket historically occurred in the Colorado and Guadalupe basins of central Texas (Howells et al. 1996; Howells et al. 1997). Over the past thirty years, a combination of natural and human-induced stressors has led to the dramatic decline of this species in both river systems (Howells 2009). Only six populations of the Texas fatmucket have been documented since 1992 (Howells et al. 2003). Several of these populations have since declined or been eliminated completely (Howells 2006; Burlakova and Karatayev 2008). Recent surveys indicate that only four of the six known Texas fatmucket populations still survive (Howells 2009). The populations that remain are at risk from scouring floods, dewatering, and poor land management practices.

NatureServe ranks the Texas fatmucket as critically imperiled across its range.

10. Texas fawnsfoot (*Truncilla macrodon*). The Texas fawnsfoot historically occurred in the Colorado and Brazos drainages of central Texas. This species has been considered rare since its formal description in 1859; only 250-300 specimens have ever been collected (Howells 2009). Live Texas fawnsfoot have not been observed in the Colorado River since 1999. A recently discovered population in the Brazos River between Possum Kingdom and the mouth of the Navasota River represents the only known surviving population of this species (Howells 2009). NatureServe ranks the Texas fawnsfoot as imperiled across its range.

11. Texas heelsplitter (*Potamilus amphichaenus*). The Texas heelsplitter is restricted to the Sabine, Neches, and Trinity rivers of Texas. There is historical evidence the species may have once occurred in Louisiana and Oklahoma. In recent years, only a small number of survivors have been found in the upper Sabine River (Howells 2006) and the Angelina River upstream of Sam Rayburn Reservoir (Karatayev and Burlakova 2007a). A significant population did persist in B.A. Steinhagen Reservoir and the Neches River immediately below Town Bluff Dam (Howells 2006; Howells 2007). However, that Texas heelsplitter population may have experienced significant reduction recently due to habitat loss (Howells 2009). A recovering population was found in the Trinity River upstream of Lake Livingston in 1996 (Howells 1997). NatureServe ranks the Texas heelsplitter as critically imperiled across its range.

12. Texas hornshell (*Popenaias popeii*). The Texas hornshell is regional endemic known only from discrete sections of the Rio Grand River in Texas and a short segment of the Black River in New Mexico (Howells 2001a; Strenth et al. 2004; Howells 2006; Carman 2007; Burlakova and Karatayev 2008). The discovery of 30 individuals in a Webb County portion of the Rio Grande River in 2003 provides the only evidence of an extant population in Texas (Howells 2004). NatureServe ranks the Texas hornshell as critically imperiled across its range. This mussel is currently listed as a candidate for protection under the U.S. Endangered Species Act.

13. Texas pigtoe (*Fusconaia askewi*). The Texas pigtoe is a regional endemic limited to a relatively small area in Texas and Louisiana. The species has experienced a drop in numbers and a declining area of occupancy over the past decade (Howells 2009). Populations of the Texas pigtoe documented since 1990 include the Trinity River above Lake Livingston, a tributary of the West Branch San Jacinto River, and the Sabine River above Toledo Bend Reservoir. It was also reported alive in the Angelina River in 1984 and Neches River in 1986, but has not been observed in either location since (Howells et al., 1996). NatureServe ranks the Texas pigtoe as imperiled across its range.

14. Texas pimpleback (*Quadrula petrina*). The Texas pimpleback is an endemic species confined to the Colorado and Guadalupe drainages. Over the past few decades, populations of this species have suffered steep declines. Live Texas pimpleback have been observed at only five sites since 1992 (Howells 2009). The species has apparently been eliminated from a tributary of the Colorado River in Runnels County and the main channel of the Colorado River upstream of Lake Buchanan. The only confirmed significant population in the Concho River persists, but has been badly reduced by dewatering (Howells 2009). NatureServe ranks the Texas pimpleback as imperiled across its range.

15. Triangle pigtoe (*Fusconaia lananensis*). The triangle pigtoe is endemic to the Neches and San Jacinto Rivers and Village Creek in eastern Texas (Howells et al., 1996). It has been extirpated from Lanana Creek in Nacogdoches County. Extant triangle pigtoe populations are limited and the ecological security of most occupied sites is marginal. NatureServe ranks the triangle pigtoe as critically imperiled across its range.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the protection of a valuable public resource. Mussels are an important component of healthy aquatic ecosystems, both as a food source for many other aquatic and terrestrial organisms, and as an important indicator species

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rule.

Under Parks and Wildlife Code, §78.002, no person may take mussels from the public water of the state without a resident or nonresident commercial mussel and clam fisherman's license. In the 2008-09 license year, the department issued seven resident commercial mussel and clam fisherman's licenses and one non-resident commercial mussel and clam fisherman's license. The department assumes for purposes of this analysis that all businesses affected by the rule are small or micro-businesses.

The rule as proposed would not compel or mandate any action on the part of any entity, including small businesses or micro-businesses. In particular, the proposed rules would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; change market competition; or increase taxes or fees; or lead to loss of sales or profits.

The department contacted each of the current permittees either by phone or certified mail, to determine the nature of their commercial mussel harvest. Three responses were received. All three permittees informed the department that none of the species affected by the proposed rule were species collected by the permittees, indicating that the species affected by the rule are not in commercial demand. Additionally, the department surveyed acknowledged experts in the commercial mussel trade to determine the suitability of the affected species for commercial use. The department has determined that commercial harvest of freshwater mussels in Texas has focused on several species taken for shells used to produce cultured pearl nuclei for implantation and for natural pearls. Species taken for pearl-nuclei shells must be large, thick-shelled, and have white nacre (inner shell or mother-of-pearl lining). In Texas, these include washboard (*Megaloniais nervosa*), threeridge (*Amblema plicata*), and southern mapleleaf (*Quadrula apiculata*); the pimpleback species in Texas (*Quadrula* spp.) may be taken, but most never grow large enough to be of interest, except occasionally Texas pimpleback (*Q. petrina*). Species that are small, thin-shelled, or that have colored nacre are not taken by commer-

cial shellers. Any of the species taken for pearl-nuclei shells can also produce natural pearls (but some do so only very rarely), but most of the Texas natural pearl harvest focuses on a single species, Tampico pearlymussel (*Cyrtornaias tampicoensis*).

The department has prepared an analysis of the commercial value of each of the mussel species:

False spike--too small and thin to be of interest to shellers; not reported to produce natural pearls;

Golden orb--too small and thin to be of interest to shellers; not reported to produce natural pearls;

Louisiana pigtoe--too small to be of interest to shellers; not reported to produce natural pearls;

Mexican fawnsfoot--too small and thin to be of interest to shellers; not reported to produce natural pearls;

Salina mucket--too thin and usually too small to be of interest to shellers; not reported to produce natural pearls;

Sandbank pocketbook--although this species grows to a large size, it is too thin shelled to be of interest to shellers (and is easily recognized); not reported to produce natural pearls (it probably does, but has never been specifically reported taken by pearlshellers);

Smooth pimpleback--too small to be of interest to shellers (an occasional large individual may approach harvestable size, but the number of large animals is so limited, that harvest focused on this species would be unlikely); not reported to produce natural pearls;

Southern hickorynut--too small to be of interest to shellers; not reported to produce natural pearls;

Texas fatmucket--too small and thin to be of interest to shellers; not reported to produce natural pearls;

Texas fawnsfoot--too small and thin to be of interest to shellers; not reported to produce natural pearls;

Texas heelsplitter--too thin to be of interest to shellers; not reported to produce natural pearls;

Texas hornshell--too small, thin, and brittle to be of interest to shellers; not reported to produce natural pearls;

Texas pigtoe--too small and thin to be of interest of shellers (note that outside Texas, other pigtoes are major shell species, but this local species is not acceptable for production of implant nuclei); not reported to produce natural pearls;

Texas pimpleback--this species has been occasionally taken (often accidentally when southern mapleleaf shells are being harvested) by shellers because its shell does grow large and thick enough to produce pearl implant nuclei, but it has never been a focal point of significant harvest and is now too rare to support commercial fisheries; not reported to produce natural pearls;

Triangle pigtoe--too small and thin to be of interest to shellers; not reported to produce natural pearls.

On occasion there has been commercial harvest of colored shells of Tampico pearlymussel and bleufer (*Potamilus purpuratus*) for inlay and arts and crafts purposes, but this has been sporadic, with limited numbers taken, and has never endured for an extended period of time (and has not been reported in some time). Anglers sometimes take freshwater mussels for use as bait, but this has been on an individual basis and has never apparently been subject of commercial activity. Historically,

mussel shells were taken to produce buttons, but this industry largely ended when plastics were developed and is no longer an element of commercial mussel shell harvest.

The department has therefore determined, on the basis of responses from commercial musselers and experts in the field, that none of the species of mussels affected by the proposed rule is of commercial value, and therefore, the rule as proposed will not affect small or micro-businesses. Accordingly, the department has not prepared an economic impact statement or regulatory flexibility analysis.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Dr. Wendy Gordon, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8741 (e-mail: wendy.gordon@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, Chapter 67, which requires the department to develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully and requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed rule affects Parks and Wildlife Code, Chapters 67.

§65.175. *Threatened Species.*

A threatened species is any species that the department has determined is likely to become endangered in the future. The following species are hereby designated as threatened species:

Figure: 31 TAC §65.175

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904163

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 389-4775



SUBCHAPTER T. DEER BREEDER PERMITS

The Texas Parks and Wildlife Department (the department) proposes the repeal of §65.611 and new §65.611, concerning Deer Breeder Permits. The proposed repeal and new section are nec-

essary to address department concerns about wildlife diseases that could potentially be transmitted to wildlife in Texas by deer originating from out-of-state sources.

Proposed new subsection (a) would require that deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, or R not be commingled with deer held in a permitted deer breeding facility. The proposed new subsection is identical to current subsection (a) and is necessary because other permits issued by the department authorize the temporary capture of deer from the wild for various purposes, while a deer breeder permit authorizes only transfers of breeder deer between deer breeders or release to the wild.

Proposed new subsection (b) would make it an offense for a person to place or hold breeder deer in captivity at any place or on any property other than property for which a deer breeder's permit or other lawful permit is issued, and would provide an exception for the transportation and temporarily holding of breeder deer for breeding, nursing, or veterinary purposes. The proposed new subsection is identical to current subsection (b) and is necessary to prevent the commingling of breeder deer with wild deer, except for release or sale from facilities meeting disease management criteria, or on a temporary basis for legitimate purposes such as breeding at another facility, nursing, or veterinary care.

Proposed new subsection (c) would prohibit the holding of breeder deer in a trailer or other vehicle of any type except for the purpose of immediate transportation from one location to another. The proposed new subsection is identical to current subsection (c) and is necessary to ensure that deer are humanely treated.

Proposed new subsection (d) would stipulate that possession of a deer breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals. The proposed new subsection is identical to current subsection (d) and is necessary to ensure that deer are humanely treated.

Proposed new subsection (e) would prohibit deer breeders from exceeding the number of breeder deer allowable for the permitted facility, as specified by the department on the deer breeder's permit. The proposed new subsection is identical to current subsection (e) and is necessary because only by establishing the number of deer that may be lawfully possessed in a given facility is the department able to prove cases in which people have obtained deer unlawfully.

Proposed new subsection (f) would clearly and unambiguously state that the importation of deer or attempted importation of deer into Texas from an out-of-state source is an offense. The proposed new section is necessary to eliminate confusion surrounding the basis for the current rule, which prohibits the possession of deer obtained from an out-of-state source.

The provisions of current subsection (f) that prohibit the possession of deer obtained from an out-of-state source and create an exception for deer obtained prior to June 21, 2005, are retained. The provision prohibiting the possession of deer obtained from an out-of-state source is necessary to prevent the introduction of disease to wild populations in Texas. The provision creating an exception for deer obtained prior to June 21, 2005 is necessary because June 21, 2005 is the effective date of the provision prohibiting the possession of deer obtained from an out-of-state source and the department did not want the rule to be retroactive.

Current subsection (f) was promulgated in 2005 in response to concerns about the potential introduction of Chronic Wasting Disease (CWD) to susceptible native ungulate populations. Although intended at the time to address CWD, the rule for all practical purposes had the additional effect of protecting wildlife and livestock in Texas from all diseases that affect, are carried by, or are transmissible through white-tailed or mule deer. The proposed new subsection would make it clear that the act of importing or attempting to import white-tailed deer or mule deer is an offense, which is necessary to protect native wildlife populations from various disease threats.

Since 2005, the department has become aware of additional potential epidemiological threats to native wildlife, particularly bluetongue virus (BTV), Epizootic Hemorrhagic Disease Virus (EHDV), Malignant Catarrhal Fever (MCF), and Adenovirus Hemorrhagic Disease (AHD), all of which are viruses that affect deer or can be transmitted by deer to other wildlife or livestock.

EHDV and BTV are closely related viruses, transmitted by biting insects, which cause hemorrhagic diseases in ruminant animals such as sheep, cattle, and deer. Hemorrhagic diseases have been implicated in large-scale mortality in white-tailed deer, mule deer, and pronghorn antelope (Thorne, 1982; Gibbs and Greiner, 1989). Mortality rates for deer with EHDV or BTV can be as high as 50%, according to the Texas Veterinary Medical Diagnostic Laboratory. Studies by the Auburn University Veterinary Diagnostic Laboratory have documented the presence in Alabama of the five strains (serotypes) of BTV known to occur in North America (serotypes 2, 10, 11, 13, and 17). The presence of these serotypes raises the concern that the epidemiology of these viruses in North America may be changing and could result in more extensive disease in U.S. livestock and wildlife.

Malignant catarrhal fever (MCF) is a frequently fatal disease caused by one of several herpesviruses. White-tailed deer are extremely susceptible to MCF, which has been detected in populations of captive cervids in the north-central United States.

Adenovirus hemorrhagic disease (AHD) was identified in California in 1993 and caused high mortality in mule deer.

The emergence of numerous disease threats points to the need for the department to be proactive in protecting the state's wildlife resources and the multi-billion-dollar hunting and ecotourism industries that depend upon them. The department strongly believes that prohibiting the entry of deer from other states is a critically important step in minimizing to the greatest extent possible the potential biological and economic impacts that a disease outbreak could cause in Texas.

Mr. Clayton Wolf, Big Game Program Director, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the rules.

Mr. Wolf also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection of native wild deer from disease threats originating from imported deer.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no

direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rules. The rules would not compel or mandate any action on the part of any entity, including small businesses or micro-businesses. In particular, the proposed rules would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Clayton Wolf, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4568 (e-mail: clayton.wolf@tpwd.state.tx.us).

31 TAC §65.611

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the authority of Parks and Wildlife Code, §43.357, which authorizes the commission to make regulations governing procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer.

The proposed repeal affects Parks and Wildlife Code, Chapter 43.

§65.611. Prohibited Acts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904164

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 389-4775



31 TAC §65.611

The rule is proposed under the authority of Parks and Wildlife Code, §43.357, which authorizes the commission to make regulations governing procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer.

The proposed rule affects Parks and Wildlife Code, Chapter 43.

§65.611. Prohibited Acts.

(a) Deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, or R shall not be commingled with deer held in a permitted deer breeding facility.

(b) A person commits an offense if that person places or holds breeder deer in captivity at any place or on any property other than property for which a deer breeder's permit, or a permit authorized under other provisions of this title or Parks and Wildlife Code, is issued, except that a permittee may transport and temporarily hold breeder deer at another location for breeding, nursing, or veterinary purposes as provided in this subchapter.

(c) No breeder deer shall be held in a trailer or other vehicle of any type except for the purpose of immediate transportation from one location to another.

(d) Possession of a deer breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

(e) No deer breeder shall exceed the number of breeder deer allowable for the permitted facility, as specified by the department on the deer breeder's permit.

(f) This subsection does not apply to breeder deer lawfully obtained prior to June 21, 2005. Except as provided in this subsection, no person may:

(1) possess a deer acquired from an out-of-state source; or

(2) import or attempt to import deer from an out-of-state source.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904165

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 389-4775



PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER E. ECONOMICALLY DISTRESSED AREAS

DIVISION 1. ECONOMICALLY DISTRESSED AREAS PROGRAM

31 TAC §363.513

The Texas Water Development Board (Board) proposes to add new §363.513 to Chapter 363, Subchapter E, relating to Economically Distressed Areas, to provide financial assistance

for plumbing improvements pursuant to Texas Water Code §17.9225, as added by the Act of May 30, 2009, House Bill (HB) 2374, 81st Legislature, Regular Session. The purpose of the proposed rule is to implement the provisions of HB 2374 and to provide guidance to political subdivisions in utilizing financial assistance under HB 2374.

Background and Summary of the Factual Basis for the Proposed New Rule.

The board proposes new §363.513 (relating to Residential Water and Sewer Connections) in response to House Bill 2374, passed by the 81st Texas Legislature. HB 2374 amends Water Code, Chapter 17, Subchapter K, by adding new §17.9225 that authorizes the Board to use funds in the Economically Distressed Areas Account to provide financial assistance to a political subdivision to pay certain costs related to water and wastewater connections and plumbing improvements in economically distressed areas. Financial assistance may be provided only to residents who demonstrate an inability to pay for the improvements described in the statute in accordance with rules adopted by the Board.

Proposed §363.513 notifies applicants for financial assistance from the Economically Distressed Areas Program that funds in that program may be used to pay for connection costs under Water Code §17.9225(b) for first-time connection to a public water or wastewater system. In addition, the proposed rule provides guidance to political subdivisions on how to comply with §17.9225(c), which limits assistance under this statute to residents who demonstrate an inability to pay for the improvements. The proposed rule defines "inability to pay" by reference to the Department of Housing and Urban Development's definition of a low income family currently found in Title 24, Code of Federal Regulations, §5.603. The proposed rule also defines connection, public system, public water system, and yard water service. Finally, the proposed rule requires use of the Board's Economically Distressed Areas Program Survey Instrument in collecting the data necessary to determine those households that can demonstrate an inability to pay for the improvements.

Fiscal Note: Costs to State and Local Governments.

Ms. Melanie Callahan, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking.

Public Benefits and Costs.

Ms. Callahan also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking because it will improve public health and sanitation.

Local Employment Impact Statement.

The Board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The Board has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The Board has also determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

Regulatory Analysis.

The Board has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

Takings Impact Assessment.

The Board has determined that the promulgation and enforcement of this proposed rule will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule does not burden or restrict or limit the owner's right to property. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

Submittal of Comments.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 463-5580.

Statutory Authority. This rulemaking is proposed under the authority of §6.101, Water Code, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board and §17.9225, Water Code, which authorizes the Board to adopt rules to implement the provisions of the statute.

Cross reference to statute: Texas Water Code, Chapter 17, Subchapter K, §17.9225.

§363.513. Residential Water and Sewer Connections.

(a) Economically Distressed Area Program (EDAP) funds may be used to provide financial assistance to political subdivisions for plumbing connections to residences pursuant to §17.9225, Water Code, relating to residential water and sewer connection assistance.

(b) Definitions. The following words and terms shall have the following meanings when used in this section.

(1) Connection--joining the indoor water and wastewater plumbing of a residence to an existing public water supply or sanitary sewer system.

(2) Public System--a public water supply or sanitary sewer system.

(3) Public Water Supply System--a system that supplies safe drinking water as defined in Chapter 341, Health and Safety Code.

(4) Sanitary Sewer System--a system used to transport waste as defined by Chapter 26, Water Code.

(5) Yard Water Service--the residence supply piping that carries potable water from the water meter or other source of water supply to the point of connection to the residence.

(c) Financial assistance may be provided for first-time connection to a public system to pay for the following costs:

(1) the costs of connecting a residence to a public water supply system constructed with financial assistance;

(2) the costs of installing yard water service connections;

(3) the costs of installing indoor plumbing facilities and fixtures;

(4) the costs of connecting a residence to a sanitary sewer system constructed with financial assistance;

(5) necessary connection and permit fees; and

(6) necessary costs related to the design of plumbing improvements described by this subsection.

(d) Financial assistance under this section is limited to residences that demonstrate an inability to pay for the improvements. Proof of median household income that does not exceed the definition of a low income family as defined by the Department of Housing and Urban Development shall constitute a demonstrated inability to pay for the improvements provided for purposes of this section.

(e) To document household income, the political subdivision shall use the Texas Water Development Board's Economically Distressed Areas Program Survey Instrument.

(f) The political subdivision shall determine the needs related to connection of residences in the area to be served by the project to water supply and sewer services during the planning phase of a project.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904150

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-8061



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.572, §3.577

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Comptroller of Public Accounts proposes the repeal of §3.572, concerning 1992 transition and §3.577, concerning credit for sales tax paid on property used in manufacturing. These sections are being repealed as they apply only to reports that are beyond the statute of limitations. The proposed repeal is a result of a rule review of Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter V, conducted by the comptroller. The rule review was performed under Government Code, §2001.039, and concluded that these sections are now obsolete.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by removing unnecessary rules from the Texas Administrative Code. There would be no anticipated significant economic cost to the public. This repeal is proposed under Tax

Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 34.

The repeal implements Government Code, §2001.039, which authorizes a state agency to repeal rules that are no longer necessary as a result of a rule review performed under that section.

§3.572. *1992 Transition.*

§3.577. *Credit for Sales Tax Paid on Property Used in Manufacturing.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904096

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0387



CHAPTER 13. UNCLAIMED PROPERTY REPORTING AND COMPLIANCE

34 TAC §§13.16 - 13.19

The Comptroller of Public Accounts proposes new §13.16, concerning applicability; §13.17, concerning definitions; §13.18, concerning provisions of information to the comptroller; and §13.19, concerning limitations. The new sections are necessary to implement Senate Bill 1589, 81st Legislature, 2009, and to better enable the comptroller's office and the Department of Public Safety, Employees Retirement System, Teacher Retirement System, and Texas Workforce Commission to share information and identify persons who are entitled to unclaimed property.

Senate Bill 1589 creates a process by which the Department of Public Safety, Employees Retirement System, Teacher Retirement System, and Texas Workforce Commission will share certain information with the comptroller's office in an effort to identify persons that are entitled to unclaimed property reported to the comptroller. Senate Bill 1589 requires the comptroller to adopt rules regarding the format in which the information shall be provided to the comptroller by the relevant agencies.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as

a result of enforcing the rule will be in improving the procedures to identify persons entitled to unclaimed property. The proposed rules would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Laywon Boatner, Area Manager, Unclaimed Property Division, at laywon.boatner@cpa.state.tx.us, or at P.O. Box 12019, Austin, Texas 78711-2019.

The new rules are authorized under Government Code, §§411.0111, 811.010 and 821.010, and Labor Code, §301.086, which requires the comptroller to develop rules regarding the sharing of information with the comptroller to aid in identifying persons entitled to unclaimed property held with the comptroller.

The new rules implement Government Code, §§411.0111, 811.010 and 821.010, and Labor Code, §301.086.

§13.16. Applicability.

Pursuant to Texas Government Code, Chapters 411, 811, and 821, and Texas Labor Code, Chapter 301, §§13.17, 13.18 and 13.19 of this title (relating to Definitions, Provisions of Information to the Comptroller, and Limitations) apply to all state agencies for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller.

§13.17. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Agency" means the Department of Public Safety, Employees Retirement System, Teacher Retirement System, and the Texas Workforce Commission.

(2) "Comptroller" means the Comptroller of Public Accounts.

(3) "Information" means the name, address, social security number, date of birth, driver's license or state identification number, and any other information the comptroller believes will aid its efforts to locate persons with unclaimed property reported to the comptroller.

(4) "Transfer" means transferred electronically over secure format.

§13.18. Provisions of Information to the Comptroller.

(a) Each state agency shall transfer to the comptroller all information not later than June 1. A state agency may transfer information to the comptroller more often than one time per year. A state agency may periodically update previously transferred information as often as the comptroller and state agency deem necessary.

(b) A state agency shall transfer information in a format that recognizes the security concerns of transmitting the information. The comptroller and state agencies shall take precautions to protect the confidentiality of the information transferred. The comptroller and state agencies shall work collaboratively to develop the means and processes to securely transfer information from the state agencies to the comptroller.

(c) After using the information provided by the state agencies to identify persons that may have claims to unclaimed property held by the comptroller, the comptroller may purge the information from its systems provided that the purging of the information takes into account the security, sensitivity and confidentiality of the information to be purged.

§13.19. Limitations.

(a) Nothing in §§13.16, 13.17, 13.18 and 13.19 of this title (relating to Applicability, Definitions, Provisions of Information to the Comptroller, and Limitations) requires a state agency to search for or transfer information held outside its normal course of business.

(b) Information provided to the comptroller is confidential and may not be disclosed to the public.

(c) The comptroller shall use the information provided by the state agencies exclusively for the purposes of identifying persons entitled to unclaimed property reported to the comptroller.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2009.

TRD-200904072

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 269. RECORDS AND PROCEDURES

37 TAC §269.1

The Texas Commission on Jail Standards proposes an amendment to §269.1, concerning Deaths in Custody reports, to comply with changes enacted by the 81st Legislature.

Adan Munoz, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has also determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§269.1. Record System.

The sheriff/operator shall maintain the following records:

(1) - (4) (No change.)

(5) Deaths in Custody

(A) The Texas Commission on Jail Standards shall be notified of all deaths of inmates while in the custody of sheriff/operator within 24 hours of the death.

(B) Upon conclusion of the investigation by the sheriff/operator or any other designated law enforcement agency, the sheriff or operator shall forward the report to the Texas Commission on Jail Standards within 10 days.

(C) The report on the death shall be made available for review by Commission staff upon request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904117

Brandon S. Wood

Assistant Director

Texas Commission on Jail Standards

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-8236



CHAPTER 271. CLASSIFICATION AND SEPARATION OF INMATES

37 TAC §271.1

The Texas Commission on Jail Standards proposes an amendment to §271.1, concerning Objective Classification Plan, to comply with changes enacted by the 81st Legislature.

Adan Munoz, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has also determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§271.1. Objective Classification Plan.

(a) Each sheriff/operator shall develop and implement an objective classification plan approved by the Commission by January 1, 1997. The plan shall include principles, procedures, instruments and explanations for classification assessments, housing assignments, re-

assessments and inmate needs. Plans utilizing an approved objective classification system shall be submitted and approved by the Commission. The following principles and procedures shall be addressed:

(1) - (2) (No change.)

(3) custody levels and special housing needs shall be assessed to include minimum, medium and maximum custody levels and the placement and release of inmates to and from special units including protective custody, administrative separation, disciplinary separation and mental and medical health housing including known pregnant inmates;

(4) - (12) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904118

Brandon S. Wood

Assistant Director

Texas Commission on Jail Standards

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-8236



CHAPTER 273. HEALTH SERVICES

37 TAC §273.2

The Texas Commission on Jail Standards proposes an amendment to §273.2, concerning Health Services Plan, to comply with changes enacted by the 81st Legislature.

Adan Munoz, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has also determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§273.2. Health Services Plan.

Each facility shall have and implement a written plan, approved by the Commission, for inmate medical, mental, and dental services. The plan shall:

(1) - (4) (No change.)

(5) provide procedures for medical, mental, nutritional requirements, special housing and appropriate work assignments for known pregnant inmates;

(6) [~~(5)~~] provide procedures for the control, distribution, secured storage, inventory, and disposal of prescriptions, syringes, needles, and hazardous waste containers;

(7) [~~(6)~~] provide procedures for the distribution of prescriptions in accordance with written instructions from a physician by an appropriate person designated by the sheriff/operator;

(8) [~~(7)~~] provide procedures for the control, distribution, and secured storage of over-the-counter medications;

(9) [~~(8)~~] provide procedures for the rights of inmates to refuse health care in accordance with informed consent standards for certain treatments and procedures (in the case of minors, the informed consent of a parent, guardian, or legal custodian, when required, shall be sufficient);

(10) [~~(9)~~] provide procedures for all examinations, treatments, and other procedures to be performed in a reasonable and dignified manner and place; and

(11) [~~(10)~~] provide that adequate first aid equipment and patient evacuation equipment be on hand at all times.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904147

Brandon S. Wood

Assistant Director

Texas Commission on Jail Standards

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-8236



37 TAC §273.4

The Texas Commission on Jail Standards proposes an amendment to §273.4, concerning Health Records, to comply with changes enacted by the 81st Legislature.

Adan Munoz, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has also determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§273.4. Health Records.

(a) The health services plan shall include procedures for the maintenance of a separate health record on each inmate. The record shall include a health screening procedure administered by health personnel or by a trained booking officer upon the admission of the inmate to the facility and shall cover, but shall not be limited to, the following items:

(1) - (2) (No change.)

(3) known pregnancy;

(4) [~~(3)~~] current medical, mental, and dental care and treatment;

(5) [~~(4)~~] behavioral observation, including state of consciousness and mental status;

(6) [~~(5)~~] inventory of body deformities, ease of movement, markings, condition of body orifices, and presence of lice and vermin.

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904148

Brandon S. Wood

Assistant Director

Texas Commission on Jail Standards

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-8236



37 TAC §273.5

The Texas Commission on Jail Standards proposes an amendment to §273.5, concerning Mental Disabilities/Suicide Prevention Plan, to comply with changes enacted by the 81st Legislature.

Adan Munoz, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has also determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§273.5. Mental Disabilities/Suicide Prevention Plan.

(a) Each sheriff/operator shall develop and implement a mental disabilities/suicide prevention plan, in coordination with available medical and mental health officials, approved by the Commission by March 31, 1997. The plan shall address the following principles and procedures:

(1) (No change.)

(2) Identification. Procedures for intake screening to identify inmates who are known to be or observed to be mentally disabled and/or potentially suicidal and procedures for compliance with Code of Criminal Procedure Article 16.22 and referrals to available mental health officials;

(3) - (8) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904149

Brandon S. Wood

Assistant Director

Texas Commission on Jail Standards

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-8236



CHAPTER 281. FOOD SERVICE

37 TAC §281.3

The Texas Commission on Jail Standards proposes an amendment to §281.3, concerning Balanced Diet, to comply with changes enacted by the 81st Legislature.

Adan Munoz, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has also determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§281.3. Balanced Diet.

Except in emergency situations, meals shall be served in accordance with a written menu approved and reviewed annually for compliance

with nationally recognized allowances for basic nutrition including nutritional requirements of known pregnant inmates. This approval and review shall be documented and should be performed by a licensed or provisional licensed dietitian.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904151

Brandon S. Wood

Assistant Director

Texas Commission on Jail Standards

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-8236



CHAPTER 289. WORK ASSIGNMENTS

37 TAC §289.1

The Texas Commission on Jail Standards proposes an amendment to §289.1, concerning Assignment and Supervision, to comply with changes enacted by the 81st Legislature.

Adan Munoz, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has also determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§289.1. *Assignment and Supervision.*

Inmate work shall be assigned by staff with consideration for an inmate's condition including known pregnancy. Inmates activities shall not be supervised by other inmates. Inmates shall not have access to inmate records, nor handle inmate monies or commissary accounts. Maintenance of locking systems and other security detention devices shall not be performed by inmates.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904152

Brandon S. Wood

Assistant Director

Texas Commission on Jail Standards

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 463-8236



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER J. APPEALS AND HEARING PROCEDURES

DIVISION 4. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

40 TAC §101.8059

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes amendments to Title 40, Part 2, Chapter 101, Administrative Rules and Procedures, Subchapter J, Appeals and Hearing Procedures, Division 4, Office for Deaf and Hard of Hearing Services, §101.8059.

DARS is proposing to amend §101.8059, Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate, to provide clarification and necessary expansion of the grounds for denying, revoking, or suspending an interpreter application or certificate, or otherwise disciplining a certificate holder, including grounds relating to failure to disclose criminal convictions and to provide requested documentation and information to the department.

The following statutes and regulations authorize the proposed rule amendments: Texas Human Resources Code, Chapters 81, 82, and 117; Texas Occupations Code, Chapter 53; and the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, as amended.

Bill Wheeler, Chief Financial Officer, Texas Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the proposed amendments are in effect, there will be no foreseeable fiscal implications for state or local governments costs or revenues as a result of enforcing or administering the proposal. Mr. Wheeler has determined that there will be no probable economic cost to persons who are required to comply with the proposal.

Mr. Wheeler also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposal will be stronger and clearer rules relating to interpreters and interpreter services for the deaf and hard of hearing community, assurances to the public that the necessary rules are in place to provide appropriate oversight of state certified interpreters, and regulatory guidance to interpreters clarifying the rules relating to the duties and responsibilities associated with their certification.

Additionally, in accordance with Texas Government Code §2001.022, Mr. Wheeler has determined that the proposed amendments will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Wheeler has determined that the proposal will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756.

These amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.8059. Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate.

The Office may deny application; suspend or revoke certification; or otherwise discipline, reprimand, or place on probation a certificate holder for any of the following causes:

(1) violations of federal or state laws that are substantiated by credible evidence, whether or not there is a complaint, indictment, or conviction, such violations include, ~~[including]~~ but are not limited to, the following:

(A) - (C) (No change.)

(2) - (3) (No change.)

(4) impersonating another person who holds an interpreter certification from the Department ~~[office]~~;

(5) allowing another person to use the certificate holder's certificate or five-year certificate renewal documents ~~[their interpreter certification]~~;

(6) misrepresenting ~~[representing]~~ oneself or another interpreter as having a certification awarded by the Department or as having a certification level ~~[of certification]~~ different from the actual level of certification awarded by the Department ~~[Office, in excess of the actual level of certification]~~;

(7) using fraud, deception, which includes, but is not limited to, cheating, or misrepresentation on ~~[in]~~ an application for certification~~[-]~~ during the certification examination ~~[or evaluation]~~, or in the annual certificate ~~[certification]~~ maintenance or five-year certificate renewal process;

(8) - (10) (No change.)

(11) intentionally harassing, abusing, or intimidating, either physically or verbally, a consumer, including individuals who are part of the interpreted situation; a board member; a rater ~~[evaluator]~~; or any staff of the Department;

(12) intentionally divulging or using inappropriately any aspect of confidential information relating to the certification examination ~~[evaluation]~~ including content, topic, vocabulary, identity of individuals involved in the tests, skills, written test questions, and any other testing materials deemed confidential;

(13) failure to meet requirements for annual certificate ~~[certification]~~ maintenance or five-year certificate renewal;

(14) (No change.)

(15) falsifying or providing false ~~[falsification of re-certification]~~ documents in support of five-year certificate renewal, by altering original letters, certificates issued through continuing education, or attendance verification; ~~[or]~~

(16) failure to disclose a criminal conviction or providing false or misleading information concerning a criminal conviction;

~~[(16) violation of a statute, rule, or policy of the Office or Department.]~~

(17) failure to provide information or documentation requested by the Department for any purpose related to certification or the certification program, including, but not limited to, information or documentation requested;

(A) in consideration of an application for certification, annual certificate maintenance or five-year certificate renewal; or

(B) concerning criminal conviction records; or

(18) violation of a statute, rule, order, or policy of the Department or the terms or conditions of a probation, suspension, or revocation imposed by the Department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904138

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 424-4050



CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes to amend the DARS rules in Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, by amending Subchapter A, General Rules, §109.101, Definitions; by renaming the title of Subchapter B and amending Subchapter B, Board for Evaluation of Interpreters and Interpreter Certification, §109.227, Certification; and by proposing new §109.228, Qualifications and Requirements for Board for Evaluation of Interpreters (BEI) General Certificate or Certification of Subchapter B, Board for Evaluation of Interpreters and Interpreter Certification, and a new Subchapter E, Certified Trilingual Interpreters, with new §109.501, Qualifications and Requirements for Trilingual Certification, and new §109.503, Disciplinary Actions, Complaints, and other Conditions Impacting the Validity of a Trilingual Certification.

Specifically, DARS is proposing to amend §109.101, Definitions, to clarify existing definitions and to add additional definitions necessary to provide proper understanding of the program rules associated with DARS' interpreter certifications program; and to amend §109.227, Certification, to add a new subsection that provides notice that DARS will conduct criminal conviction

records check for all applicants and current certificate holders to determine eligibility to become certified or to maintain certification. DARS is also proposing new §109.228, Qualifications and Requirements for Board for Evaluation of Interpreters (BEI) General Certificate or Certification; §109.501, Qualifications and Requirements for Trilingual Certification; and §109.503, Disciplinary Actions, Complaints, and Other Conditions Impacting the Validity of a Trilingual Certification, to clarify the qualifications for DARS' BEI General Certification and to promulgate rules for its new Trilingual Certification.

The following statutes and regulations authorize the proposed new rules and rule amendments: Texas Human Resources Code, Chapters 81, 82, and 117; Texas Occupations Code, Chapter 53; and the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, as amended.

Bill Wheeler, DARS Chief Financial Officer, estimates that for each year of the first five years that the proposed new rules and amendments are in effect, there will be no foreseeable fiscal implications for state or local governments costs or revenues as a result of enforcing or administering the proposal. However, Mr. Wheeler has determined that there will be probable economic cost to persons who are required to comply with the proposal, including examination, certification, annual maintenance, and five-year renewal fees, and costs associated with obtaining a GED, and/or an Associate's degree.

Mr. Wheeler also has determined that for each year of the first five years the proposed new rules and amendments are in effect, the public benefit anticipated as a result of enforcing the proposal will be stronger and clearer rules relating to interpreters and interpreter services for the deaf and hard of hearing community, assurances to the public that the necessary rules are in place to provide appropriate oversight of state certified interpreters, and regulatory guidance to interpreters clarifying the rules relating to the duties and responsibilities associated with their certification.

Additionally, in accordance with Texas Government Code §2001.022, Mr. Wheeler has determined that the proposed new rules and amendments will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Wheeler has determined that the proposal will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756.

SUBCHAPTER A. GENERAL RULES

40 TAC §109.101

These new rules and amendments are proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.101. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) - (9) (No change.)

(10) Interpreter [~~Qualified interpreter~~]--an individual who holds a current interpreter certificate issued by the Department [BEI] or, where specifically identified in this chapter, a current certificate issued by the Registry of Interpreters for the Deaf, Inc. (RID). [~~This definition does not apply to an individual who is required to hold a court interpreter certification from BEI or a legal certification from RID to interpret court proceedings.~~]

(11) (No change.)

(12) Trilingual interpreter services--the provision of interpreting services by an otherwise qualified interpreter who is proficient in Spanish [a third language], in addition to English and sign language.

(13) Trilingual interpreter--an interpreter certified under Subchapter E of this chapter, who is certified as meeting the proficiency standards established by the Department to facilitate communication in verbal English, American Sign Language, and verbal Spanish.

(14) BEI General Certificate or BEI General Certification--the certificate or certification awarded by the Department to an individual, who passed designated written and performance tests, that verifies the individual has skills to perform interpreting and transliterating, both expressively and receptively, and specifies the skill level at which the individual can perform.

(15) NAD--National Association of the Deaf.

(16) Qualifying or prerequisite certification--one of the interpreter certifications recognized by the Department which applicants for or holders of BEI specialized certifications, such as trilingual or court interpreters, must possess in order to be eligible to take a BEI specialized certification examination or to qualify to hold a BEI specialized certification.

(17) Intermediary interpreter--a certified interpreter who is deaf or hard of hearing who has passed an interpreter skills evaluation and is certified by the Department or RID, and who is proficient at facilitating communication both linguistically and culturally between a deaf consumer and another certified interpreter.

(18) Interpret/Interpretation--Process of conveying a message either from verbal language to ASL or from ASL to verbal language.

(19) Morphemic Sign System (MSS) certificate--issued by the Department to an interpreter who has passed a skills evaluation certifying the ability to convey a message from verbal English into morphemic signs for English and from morphemic signs for English into verbal English.

(20) Oral Certificate: Basic (OC:B) certificate--the spoken-to-visible and visible-to-spoken certificate issued by the Department on the basis of passing a skills evaluation certifying proficiency in oral transliteration and speechreading.

(21) Oral Certificate: Comprehensive (OC:C) certificate--the spoken-to-visible and visible-to-spoken certificate issued by the Department on the basis of passing a skills evaluation certifying an advanced level of proficiency in oral transliteration and speechreading.

(22) Oral Certificate: Visible (OC:V) certificate--the visible-to-spoken certificate issued by the Department to a deaf or hard of hearing individual certifying an advanced level of proficiency in oral transliteration and speechreading.

(23) Transliterate/Transliteration--The process of conveying a message from either spoken language into a manually coded language or from manually coded language into a spoken language.

(24) ASL--American Sign Language.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904139

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 424-4050



SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS (BEI) GENERAL CERTIFICATE OR CERTIFICATION

40 TAC §109.227, §109.228

These new rules and amendments are proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.227. Certification.

(a) The Department, in administering the certification program, will obtain criminal conviction records information on all applicants for certification and current certificate holders, which may be used in determining whether applicants or certificate holders are eligible to obtain or maintain certification.

(b) [(a)] The Department [department] will certify an applicant who passes the appropriate examinations [examination] prescribed by the department and who satisfies [possesses] the other qualifications required by the rules in this chapter.

(c) [(b)] Upon successful completion of all requirements for certification and approval by the Office, the applicant shall be issued a card evidencing certification.

(d) [(e)] Authority: Texas Government Code, §57.022(a) and §57.022(b)(4) and Human Resources Code, §81.007(a).

§109.228. Qualifications and Requirements for Board for Evaluation of Interpreters (BEI) General Certificate or Certification.

(a) To apply to take any examination for a BEI General Certificate or BEI General Certification, an applicant must:

- (1) be at least 18 years old;
- (2) possess a high school diploma or its equivalent;

(3) not have a criminal conviction that would qualify as grounds for denial, probation, suspension, or revocation of a BEI certification, or other disciplinary action against any holder of a BEI certificate; and

(4) commencing on or after January 1, 2012, must possess at least an Associate degree from an accredited college or university.

(b) To be awarded or to continue to hold a BEI General Certificate or BEI General Certification, an individual or certificate holder must:

- (1) be at least 18 years old;
- (2) possess a high school diploma or its equivalent;

(3) not have a criminal conviction that would qualify as grounds for denial, probation, suspension, or revocation of a BEI certification, or other disciplinary action against any holder of a BEI certificate; and

(4) pass the requisite examination for the certification level sought, which includes:

- (A) Test of English Proficiency; and
- (B) the requisite performance examination; and

(5) commencing on or after January 1, 2012, must possess at least an Associate degree from an accredited college or university.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904140

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 424-4050



SUBCHAPTER E. CERTIFIED TRILINGUAL INTERPRETERS

40 TAC §109.501, §109.503

These new rules and amendments are proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.501. Qualifications and Requirements for Trilingual Certification.

(a) An applicant for Trilingual certification must provide proof of holding one of the following certificates:

(1) valid Board for Evaluation of Interpreters (BEI) Level I, II, III, IV, V, Basic, Advanced, or Master certificate; or

(2) valid Registry of Interpreters for the Deaf (RID) Comprehensive Skills Certificate (CSC), Certificate of Interpretation (CI) and/or Certificate of Transliteration (CT); or

(3) valid National Association of the Deaf-Registry of Interpreters for the Deaf (NAD-RID) National Interpreter Certification (NIC), National Interpreter Certification Advanced, or National Interpreter Certification Master; and

(4) must also meet the following qualifications and requirements:

(A) satisfy qualifications set forth in §109.228(b)(1) - (3) and (5) of this chapter (relating to Qualifications and Requirements

for Board for Evaluation of Interpreters (BEI) General Certificate or Certification);

(B) submit appropriate application and pay required fees;

(C) pass the requisite examination for the certification level sought, which includes:

(i) the Test of Spanish Proficiency; and

(ii) a trilingual performance examination.

(b) Trilingual certificate holders must satisfy the annual certificate maintenance and five-year certificate renewal requirements for both the qualifying or prerequisite certification and for the Trilingual certification.

§109.503. Disciplinary Actions, Complaints, and Other Conditions Impacting the Validity of a Trilingual Certification.

(a) The Department shall investigate complaints against and allegations of violations by any trilingual certificate holder, and shall take appropriate disciplinary action to enforce the provisions of this subchapter.

(b) Failure by any interpreter certified under this subchapter to comply with the applicable rules of this chapter may result in disciplinary action against the certificate holder by the Department.

(c) Trilingual certificate holders are subject to disciplinary action if the Department determines that a certificate holder has violated any of the grounds for disciplinary action set forth in §101.8059 of this

title (relating to Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate).

(d) Revocation, suspension, or probation of any qualifying or prerequisite certification will result in a corresponding determination against the Trilingual certification.

(e) Revocation, suspension, or probation of a Trilingual certification will result in a corresponding determination against the qualifying or prerequisite BEI-issued certification.

(f) Expiration of any qualifying or prerequisite certification will result in expiration of Trilingual certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904141

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: November 1, 2009

For further information, please call: (512) 424-4050

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.1

The Texas State Board of Dental Examiners (Board) adopts an amendment to §101.1, concerning the general qualifications for licensure. The amendment is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4607) and will not be republished.

The amendment will include reference to criminal background check requirements for licensure and will adjust language regarding the jurisprudence assessment requirement to reflect currently used terminology.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted amendment affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904098
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: October 7, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 475-0972



22 TAC §101.2

The Texas State Board of Dental Examiners (Board) adopts the amendment of §101.2, concerning licensure by examination. The amendment is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4607) and will not be republished.

This amendment is adopted based upon a recommendation from the American Board of Pediatric Dentistry. The justification for this action will replace the term "board eligible" with clarified terms.

No comments were received regarding this amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904099
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: October 7, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 475-0972



22 TAC §101.3

The Texas State Board of Dental Examiners (Board) adopts an amendment to §101.3, concerning licensure by credentials. The amendment is adopted with nonsubstantive changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4608) and will be republished. The nonsubstantive change is in subsection (b) which corrects the reference from "paragraph" to "subsection".

The amendment corrects the referenced statute in subsection (a)(9).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted amendment affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Part 5.

§101.3. *Licensure by Credentials.*

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for licensure by credentials must present proof that the applicant:

(1) Has graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association. Dental schools so accredited are approved by the Board for purposes of licensing their graduates by credentials;

(2) Is currently licensed in good standing in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Dental Practice Act;

(3) Has practiced dentistry:

(A) For a minimum of three years out of the five years immediately preceding application to the Board; or

(B) As a dental educator at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for a minimum of five years immediately preceding application to the Board;

(4) Is endorsed by the state board of dentistry that has jurisdiction over the applicant's current practice. Such endorsement is established by providing a copy under seal of the entity with jurisdiction over the applicant's current license and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) Has not been the subject of final or pending disciplinary action in any jurisdiction in which the applicant is or has been licensed;

(6) Has passed a national written examination relating to dentistry as certified by the American Dental Association Joint Commission on National Dental Examinations, or another examination approved by the Board;

(7) Has passed a state or regional general dentistry clinical examination;

(8) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the AADE Clearinghouse for Disciplinary Action. For applications filed after August 31, 2002, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification;

(9) Shows proof of current CPR certification as required by the Texas Dental Practice Act, Chapter 256, §256.101; and

(10) Submits proof of completion of 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the provisions as cited in §104.1(5), (6) and (7) of this title (relating to Requirements) and §104.2 of this title (relating to Providers).

(b) Practice experience described in subsection (a)(3) of this section must be subsequent to applicant having graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association.

(c) Each candidate for licensure by credentials must submit to the Board the required documents and information prescribed in this rule and other documents or information that may be requested to enable the Board to evaluate an application and take appropriate actions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904146

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Effective date: October 7, 2009

Proposal publication date: July 10, 2009

For further information, please call: (512) 475-0972



22 TAC §101.6

The Texas State Board of Dental Examiners (Board) adopts the repeal of §101.6, concerning Emergency Provisional Licensure for Dentists Displaced by Hurricane Katrina, without changes as proposed in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4608).

The repeal is necessary because the provisions of this section expired on August 1, 2006.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The repeal affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904101

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Effective date: October 7, 2009

Proposal publication date: July 10, 2009

For further information, please call: (512) 475-0972



22 TAC §101.7

The Texas State Board of Dental Examiners (Board) adopts the amendment of §101.7, concerning retired license status. The amendment is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4609) and will not be republished. The amendment is adopted to adjust language regarding the jurisprudence assessment to reflect currently used terminology.

No comments were received.

The amendment is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001,

which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904102
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: October 7, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 475-0972



CHAPTER 102. FEES

22 TAC §102.1

The Texas State Board of Dental Examiners (Board) adopts amendments to §102.1, concerning the Board's fee schedule. The amendment is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4609) and will not be republished. The amendment is adopted based on the General Appropriations Act for fiscal years 2010 and 2011 which requires the TSBDE to assess fees sufficient to generate \$1,309,310 in excess of \$7,328,204 during the biennium.

No comments were received.

The amendment is adopted under Texas Government Code §2001.021 et seq., and Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904103
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: October 7, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 475-0972



CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.1

The Texas State Board of Dental Examiners (Board) adopts an amendment to §103.1, concerning general qualifications for dental hygiene licensure. The amendment is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4610) and will not be republished.

The amendment is adopted to include a reference to criminal background check requirements for licensure and adjusts language regarding the jurisprudence assessment requirement to reflect currently used terminology.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted amendment affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904104
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: October 7, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 475-0972



22 TAC §103.3

The Texas State Board of Dental Examiners (Board) adopts an amendment to §103.3, concerning licensure by credentials. The amendment is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4611) and will not be republished.

The amendment is adopted to correct the referenced statute in subsection (a)(9).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted amendment affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904105
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: October 7, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 475-0972



22 TAC §103.6

The Texas State Board of Dental Examiners (Board) adopts the repeal of §103.6, concerning emergency provisional licensure for dental hygienists displaced by Hurricane Katrina, as proposed in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4612).

The repeal is necessary as the provisions of this section expired on August 1, 2006.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted repeal affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904106
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: October 7, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 475-0972



22 TAC §103.7

The Texas State Board of Dental Examiners (Board) adopts an amendment to §103.7, concerning retired license status. The amendment is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4612) and will not be republished.

The amendment is adopted to adjust language regarding the jurisprudence assessment to reflect currently used terminology.

No comments were received regarding adoption of the amendments.

The amendment is adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted amendment affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904107
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: October 7, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 475-0972



CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.10

The Texas State Board of Dental Examiners (Board) adopts the repeal of §114.10, concerning the registration of dental assistants performing radiological procedures, as proposed in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4613).

The repeal is necessary as the provisions of this section expired on September 1, 2006.

No comments were received regarding the adoption of the repeal.

This repeal is adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted repeal affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904130
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: October 7, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 475-0972



22 TAC §114.20

The Texas State Board of Dental Examiners (Board) adopts the repeal of §114.20, concerning radiologic credentialing for dental

assistants, as proposed in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4614).

The repeal is necessary as the provisions of this section became ineffective on September 1, 2007.

No comments were received regarding the adoption of the repeal.

This repeal is adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted repeal affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904132

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Effective date: October 7, 2009

Proposal publication date: July 10, 2009

For further information, please call: (512) 475-0972



22 TAC §114.21

The Texas State Board of Dental Examiners (Board) adopts an amendment to §114.21, concerning the requirements for courses and examinations required to obtain dental assistant radiologic certification. The amendment is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4614) and will not be republished.

The amendment is adopted to remove the reference to rule sections that have expired and will clarify certain requirements for course providers under this chapter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted amendment affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904133

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Effective date: October 7, 2009

Proposal publication date: July 10, 2009

For further information, please call: (512) 475-0972



CHAPTER 119. SPECIAL AREAS OF DENTAL PRACTICE

22 TAC §119.9

The Texas State Board of Dental Examiners (Board) adopts new §119.9, concerning oral and maxillofacial radiology, without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4615) and will not be republished.

The new section is adopted to comply with the definition of the specialty recommended and adopted by the American Dental Association in 2001.

No comments were received regarding adoption of the new section.

This section is adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904144

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Effective date: October 7, 2009

Proposal publication date: July 10, 2009

For further information, please call: (512) 475-0972



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.75

The Texas State Board of Public Accountancy adopts an amendment to §501.75, concerning Confidential Client Communications, without changes to the proposed text as published in the

August 7, 2009, issue of the *Texas Register* (34 TexReg 5319) and will not be republished.

The amendment will make it clear that licensees must provide client communications and records in response to grand jury subpoenas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904082

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 7, 2009

Proposal publication date: August 7, 2009

For further information, please call: (512) 305-7842



CHAPTER 511. ELIGIBILITY

SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57, concerning Definition of Accounting Courses, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5320) and will not be republished.

The section establishes the requirement for certain college level classes by persons wishing to sit for the CPA exam.

The amendment will establish the effective date for course requirements to take the CPA exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904083

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 7, 2009

Proposal publication date: August 7, 2009

For further information, please call: (512) 305-7842



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.118

The Texas State Board of Public Accountancy adopts an amendment to §523.118, concerning Limitation for Non-Technical Courses, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5322) and will not be republished.

The section establishes a limitation on the amount of non-technical Continuing Professional Education courses that can be counted toward the Board requirement of Continuing Professional Education hours.

The amendment clarifies the length of time included in the reporting period that forms the basis for calculating the 50 percent limitation on Certified Public Accountants taking non-technical Continuing Professional Education credit hours.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904084

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 7, 2009

Proposal publication date: August 7, 2009

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (Board) adopts amendments to Chapter 371, Subchapter B, §371.20, concerning Intended Use Plan, §371.24, concerning Disadvantaged Community Program through Loan Subsidies, and §371.25, concerning Criteria and Methods for Distribution of Funds for Disadvantaged Communities; Subchapter C, §371.39, concerning Review of Applications by the Executive Administrator; Subchapter D, §371.52, concerning Lending Rates; and Subchapter I, §§371.200 - 371.208, concerning Applications for Financial Assistance Filed in Response to Special Capitalization Grants. The proposed amendments were published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 5033). These amendments are adopted without changes to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules.

The Board adopts this rulemaking to amend its current rules related to the Drinking Water State Revolving Fund (DWSRF) to better ensure that all projects listed above the American Recovery and Reinvestment Act of 2009 (ARRA) DWSRF intended use plan (IUP) funding line will be able to commence construction or be under contract by the February 17, 2010 deadline established by ARRA. It is in the state's interest to ensure that unlisted provisional projects are standing by in the event it becomes clear a listed project will not meet the strict deadline. In that instance, a listed project will be de-listed, and a "ready to proceed" unlisted provisional project will be substituted, in order to ensure that Texas does not lose federal funding. To encourage prospective applicants to prepare a provisional application, a zero-percent interest loan will be made available to applicants who undertake the time and expense to prepare a "ready to proceed" application but subsequently fail to qualify for ARRA DWSRF funding.

Additionally, some projects will rest "on the funding line" whereby there are insufficient funds in the federal grant to cover the entire project. It is in the state's interest to ensure that all funds in the federal grant are used, and for applicants whose projects fall "on the funding line," the state will first calculate the total amount of additional funds necessary to fund all projects on the funding line, and then redistribute ARRA funds from those projects that have 0.0% ARRA loan fund allocations to those that have ARRA grant fund allocations in order to fully fund all ARRA projects eligible for grants. Then the amount necessary to fund the resulting revised ARRA loan funds for those projects on the funding line will be supplemented with FY2010 DWSRF funds. The total amount of 2010 DWSRF funds necessary will equal the original total of the portions of projects on the funding line that were in excess of the original ARRA DWSRF allocations.

Section-by-Section Discussion, Comments and Responses to Comments.

No comments were received regarding the proposed amendments.

The adopted amendments to §§371.20(e), 371.24(f), 371.25(a), 371.39(c), 371.52(h), 371.201, 371.203(g), 371.207(c) and (d) allow the executive administrator to earmark projects for 0.0% interest loans in two circumstances. First, the amended rules allow the executive administrator to designate a project as "provisional". In the context of the DWSRF ARRA stimulus grant,

alternative projects ("provisional projects") will be standing by and ready to proceed in the event it becomes clear that a project listed above the ARRA IUP funding line cannot make the strict time constraints of the federal stimulus bill. Applicants whose projects are listed as provisional are asked to prepare applications in anticipation of being selected to replace a project that fails to proceed in a timely fashion. The rules provide that applicants that are invited to prepare "ready to proceed" applications but subsequently are not invited to apply for special capitalization grant funding will receive invitations to apply for 0.0% interest loans from the regular DWSRF program with priority consideration.

Second, the amended rules allow the executive administrator to provide priority consideration under the regular DWSRF program for projects that fall on the special capitalization grant funding line. When the special capitalization grant funds reach their limit, and a project is left with only partial funding under the grant, the amended rules permit the executive administrator to give priority consideration to those applicants to fund the remaining portion of their project with a 0.0% interest loan from the base DWSRF program following a redistribution of funds within the ARRA allocations in order to fully fund those projects eligible for ARRA grants.

Provisional projects and partially funded projects are now defined in §371.201(2) and (3). The executive administrator is given authority to designate a project as such under §371.203(g). The executive administrator is given authority to add these projects to the regular DWSRF program intended use plan under §371.207(c) and (d). Adopted §§371.20(e), 371.24(f), 371.25(a) and 371.52(h) for the regular DWSRF program include and prioritize provisional and partially funded projects. Section 371.39(c) ensures that these projects will abide by any applicable special capitalization grant requirements.

Sections 371.200 - 371.208.

The phrase "capitalization grant" is amended to "special capitalization grant" throughout Subchapter I to more accurately distinguish these grants from the standard capitalization grants under the regular DWSRF program.

SUBCHAPTER B. PROGRAM REQUIREMENTS

31 TAC §§371.20, 371.24, 371.25

Statutory Authority.

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904108

Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: October 7, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 463-8061



SUBCHAPTER C. APPLICATION FOR ASSISTANCE

31 TAC §371.39

Statutory Authority.

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904110
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: October 7, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 463-8061



SUBCHAPTER D. BOARD ACTION ON APPLICATION

31 TAC §371.52

Statutory Authority.

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904111

Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: October 7, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 463-8061



SUBCHAPTER I. PROVISIONS RELATING TO APPLICATIONS FOR FINANCIAL ASSISTANCE UNDER SPECIAL CAPITALIZATION GRANTS; EXPEDITED REVIEW, PROCESSING AND LOAN CLOSING REQUIREMENTS

31 TAC §§371.200 - 371.208

Statutory Authority.

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904112
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: October 7, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 463-8061



CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (Board) adopts amendments to Chapter 375, §375.16, concerning Rating Process, §375.38, concerning Review of Applications by the Executive Administrator, §375.52, concerning Lending Rates, §§375.400 - 375.404 and §§375.406 - 375.408, concerning Applications for Financial Assistance Filed in Response to Special Capitalization Grants. Section 375.16 is adopted with changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 5037). Sections 375.38, 375.52, 375.400 - 375.404 and 375.406 - 375.408 are adopted without changes and will not be republished. Section 375.16(f) corrects a reference from "paragraph (1)(A) of this subsection" to "subsection (b)(1)(A) of this section".

Background and Summary of the Factual Basis for the Adopted Rules.

The Board adopts this rulemaking to amend its current rules related to the Clean Water State Revolving Fund (CWSRF) to better ensure that all projects listed above the American Recovery

and Reinvestment Act of 2009 (ARRA) CWSRF intended use plan ("IUP") funding line will be able to commence construction or be under contract by the February 17, 2010 deadline established by ARRA. It is in the state's interest to ensure that unlisted provisional projects are standing by in the event it becomes clear a listed project will not meet the strict deadline. In that instance, a listed project will be de-listed, and a "ready to proceed" unlisted provisional project will be substituted, in order to ensure that Texas does not lose federal funding. To encourage prospective applicants to prepare a provisional application, a zero-percent interest loan will be made available to applicants who undertake the time and expense to prepare a "ready to proceed" application but subsequently fail to qualify for ARRA CWSRF funding.

Additionally, some projects will rest "on the funding line" whereby there are insufficient funds in the federal grant to cover the entire project. It is in the state's interest to ensure that all funds in the federal grant are used, and for applicants whose projects fall "on the funding line," the state will first calculate the total amount of additional funds necessary to fund all projects on the funding line, and then redistribute ARRA funds from those projects that have 0.0% ARRA loan fund allocations to those that have ARRA grant fund allocations in order to fully fund all ARRA projects eligible for grants. Then the amount necessary to fund the resulting revised ARRA loan funds for those projects on the funding line will be supplemented with FY2010 CWSRF funds. The total amount of 2010 CWSRF funds necessary will equal the original total of the portions of projects on the funding line that were in excess of the original ARRA CWSRF allocations.

Section-by-Section Discussion, Comments and Responses to Comments.

No comments were received regarding the proposed amendments.

Sections 375.16, 375.38, 375.52, 375.401, 375.403, and 375.407.

The adopted amendments to §§375.16(h), 375.38(c), 375.52(f), 375.401, 375.403(g), and 375.407(c) and (d), allow the executive administrator to designate projects for 0.0% interest loans in two circumstances. First, the amended rules allow the executive administrator to designate a project as "provisional". In the context of the CWSRF ARRA stimulus grant, alternative projects ("provisional projects") will be standing by and ready to proceed in the event it becomes clear that a project listed above the ARRA IUP funding line cannot make the strict time constraints of the federal stimulus bill. Applicants whose projects are listed as provisional are asked to prepare applications in anticipation of being selected to replace a project that fails to proceed in timely fashion. The rules provide that applicants that are invited to prepare "ready to proceed" applications but subsequently are not invited to apply for special capitalization grant funding will receive invitations to apply for 0.0% interest loans from the CWSRF program with priority consideration.

Second, the amended rules allow the executive administrator to provide priority consideration under the program for projects that fall on the special capitalization grant funding line. When the special capitalization grant funds reach their limit, and a project is left with only partial funding, the amended rules permit the executive administrator to give priority consideration to those applicants to fund the remaining portion of their project with a 0.0% interest loan from the base CWSRF program following a redistribution of funds within the ARRA allocations in order to fully fund those projects eligible for ARRA grants.

Provisional projects and partially funded projects are defined in §375.401. The executive administrator is given authority to designate a project as such under §375.403(g). The executive administrator is given authority to add these projects to the regular CWSRF program intended use plan under §375.407(c) and (d). Section 375.16(h) and §375.52(f) amend the rules for the regular CWSRF base program to include and prioritize provisional and partially funded projects. Section 375.38(c) ensures that these projects will abide by any applicable special capitalization grant requirements.

Sections 375.400 - 375.404 and 375.406 - 375.408.

The phrase "capitalization grant" is amended to "special capitalization grant" throughout Subchapter D to more accurately distinguish these grants from the standard capitalization grants under the regular CWSRF program.

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §375.16

Statutory Authority: The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.

Cross Reference to Statute: Texas Water Code Chapters 15, 16, and 17.

§375.16. *Rating Process.*

(a) Policy. The rating process is designed to achieve optimum water quality management, consistent with public health and water quality goals, and to give consideration to the varying populations of the state's political subdivisions.

(b) Rating of principal projects. Proposals for inclusion of projects in an intended use plan will be rated based upon the principal project. Additional projects may be included in a proposal and may receive funding, so long as their costs represent 50% or less of the total project costs. The factors used to rate applications and the number of points assigned to each factor shall be as follows.

(1) Where the principal project is a wastewater treatment plant or collection system in which the facility's hydraulic capacity requires expansion or removal of extraneous flow, the project will receive priority points according to the following considerations. A project may receive points for only one of the considerations listed in this section at subparagraphs (A) - (E) of this paragraph, whichever results in the largest score.

(A) Where the wastewater treatment plant is at 90% or greater of its permitted capacity on an annual average flow basis as reported to the commission, or for plants which are permitted for less than one mgd, three consecutive months of the past 12 months as reported to the commission, the project will receive 3 points, provided that the project directly or indirectly improves the capacity problem at the facility.

(B) Where the wastewater treatment plant is at 75% or greater but less than 90% of its permitted capacity on an annual average flow basis as reported to the commission, or for plants which are permitted for less than one mgd, three consecutive months of the past 12 months as reported to the commission, the project will receive 2 points, provided that the project directly or indirectly improves the capacity problem at the facility.

(C) Where the wastewater treatment plant is at 65% or greater but less than 75% of its permitted capacity on an annual average

flow basis as reported to the commission, or for plants less than one mgd, three consecutive months of the past 12 months as reported to the commission, the project will receive 1.5 points provided that the project directly or indirectly improves the capacity problem at the facility.

(D) Projects intended to remedy collection system overflows under a schedule imposed by a court order, EPA administrative order, or commission enforcement order will receive 3 points.

(E) Projects to expand an existing treatment facility, permitted for no discharge, where no self-reporting flow data is required to be reported to the commission will receive 1.5 points.

(2) Where the principal project is under a schedule imposed by a court order, EPA administrative order, or commission enforcement order, the project will receive 1 point.

(3) Where the principal project is required by permit to meet a higher level of treatment at a future date or where the principal project is a conversion to a no-discharge or partial reuse facility in order to avoid a higher level of treatment, the project will receive 1.5 points.

(4) Where the principal project will provide service to an unserved area, the project will receive 1.1 points. In addition, where the applicant provides a finding from a public health official that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project, the project will receive an additional 3 points.

(5) Where the principal project is to construct innovative or alternative wastewater management systems, the project will receive 3 points.

(6) Where the principal project impacts stream segments designated as "high priority" or where a total maximum daily load (TMDL) analysis is underway or completed as identified in the current approved State of Texas 303(d) List and where the principal project will directly or indirectly mitigate the identified problem, the project will receive 4 points.

(7) Where the principal project impacts stream segments designated as "medium priority," as identified in the current approved State of Texas 303(d) List, and where the principal project will directly or indirectly mitigate the identified problem, the project will receive 3 points.

(8) Where the principal project impacts stream segments designated as "low priority," as identified in the current approved State of Texas 303(d) List, and where the principal project will directly or indirectly mitigate the identified problem, the project will receive 2 points.

(9) Where the principal project impacts stream segments designated as "threatened" as identified in the current approved State of Texas 303(d) List, and where the principal project will directly or indirectly mitigate the identified problem, the project will receive 1 point.

(10) Where the principal project will result in removal from service of one or more existing wastewater treatment plants, thus reducing the number of plant outfalls; or where the principal project will result in delivery of flow to, or receipt of flow at a regional facility, rather than create or continue use of a separate wastewater treatment facility, the project will receive 1 point.

(11) Where there is documentation that the principal project as proposed will implement a regional solution, 3 points will be awarded if the project recommended is proposed to implement one of the following:

(A) a regional facility plan for water resources funded in whole or in part by a grant from the board;

(B) a commission regionalization or consolidation plan; or

(C) other plans developed by state or regional entities pursuant to legislative authority.

(c) Rating of refinancing. If refinancing is sought for a completed project, the project will be rated in accordance with subsection (b) of this section, based upon the conditions which existed prior to the initiation of construction of the project. A completed project can not be combined with a project for which construction has not been completed, but must be rated separately.

(d) Rating score. The rating score will be the sum of the points assigned to the application under all criteria which are applicable to the application.

(e) Ranking for refinancing. Completed projects which involve refinancing will be listed in the intended use plan in the appropriate category as a separate group and will be placed below the group of projects in that category for which construction has not been completed.

(f) Tie-breaker. In the event more than one project as listed in the intended use plan receives the same rating score, funding will first be made available for the project in which the sewage treatment plant is at the greatest percentage of its rated capacity as calculated in subsection (b)(1)(A) of this section for projects improving plant capacity. For any remaining ties funding will first be made available to the applicant with the lowest annual per capita income.

(g) Abandoned facilities. Where the existing treatment facilities will be abandoned and sewage diverted to a different location, the diversion line will be given the rating score of the treatment facilities to be abandoned.

(h) Provisional projects or partially funded projects that are designated under §375.407(c) and (d) of this title (relating to Lending Rates) will receive priority consideration for a 0.0% interest loan under the intended use plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904122

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Effective date: October 7, 2009

Proposal publication date: July 31, 2009

For further information, please call: (512) 463-8061



DIVISION 3. APPLICATIONS FOR ASSISTANCE

31 TAC §375.38

Statutory Authority: The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the Board

to adopt rules necessary to carry out the powers and duties of the Board.

Cross Reference to Statute: Texas Water Code Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904124

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Effective date: October 7, 2009

Proposal publication date: July 31, 2009

For further information, please call: (512) 463-8061



DIVISION 4. BOARD ACTION ON APPLICATIONS

31 TAC §375.52

Statutory Authority: The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.

Cross Reference to Statute: Texas Water Code Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904123

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Effective date: October 7, 2009

Proposal publication date: July 31, 2009

For further information, please call: (512) 463-8061



SUBCHAPTER D. PROVISIONS RELATING TO APPLICATIONS FOR FINANCIAL ASSISTANCE FILED IN RESPONSE TO SPECIAL CAPITALIZATION GRANTS; EXPEDITED REVIEW, PROCESSING AND LOAN CLOSING REQUIREMENTS

31 TAC §§375.400 - 375.404, 375.406 - 375.408

Statutory Authority: The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the Board

to adopt rules necessary to carry out the powers and duties of the Board.

Cross Reference to Statute: Texas Water Code Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2009.

TRD-200904126

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Texas Water Development Board

Effective date: October 7, 2009

Proposal publication date: July 31, 2009

For further information, please call: (512) 463-8061



TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.10

The Texas Bond Review Board (BRB) adopts the amendments to §181.10, concerning State Debt Issuer Reports, with changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5324).

The amendments to the rule are adopted to facilitate information reporting related to material events of state securities approved by the BRB.

The 30-day comment period ended September 6, 2009, and BRB received comments from one entity on the proposed amendments. No public hearing was requested under Texas Government Code §2001.029.

Changes in the adopted amendments respond to the public comments received. BRB's legal counsel has advised that the changes affect no new persons, entities, or subjects other than those given notice and that compliance with the amended section will be less burdensome than under the proposed section. Accordingly, republication of the adopted section as proposed amendments is not required.

The following entity furnished written comments on the proposed amendments: The Texas Department of Housing and Community Affairs (TDHCA) commented against the proposed amendments applying to its multifamily housing bond issuances because currently TDHCA does not provide continuing disclosure under federal securities law with respect to those issuances. BRB agrees. The amendments as proposed requires TDHCA to make filings with BRB when a third party makes a continuing disclosure filing under federal securities law. BRB has added language to make clear filings are required with it only when an issuer of state securities rather than a third party makes continuing disclosure filings under federal securities law.

The amendments are adopted pursuant to Texas Government Code §1231.022, which gives BRB authority to adopt rules governing applications for review, the review process, and reporting requirements involved in the issuance of state securities.

The amendments implement the Texas Government Code, Chapter 1231.

§181.10. State Debt Issuer Reports.

(a) All issuers whose state securities are subject to review by the Board must file state debt issuer reports with the bond finance office on a semi-annual basis. Reports shall be submitted no later than March 15 for the six month period ending the last day of February and no later than September 15 for the six month period ending August 31.

(b) The semi-annual reports shall include:

(1) an explanation of any change during the fiscal year previous to the deadline for this report, in the debt-retirement schedule for any outstanding state security issue (e.g. exercise of redemption provision, conversion from short-term to long-term securities, etc.);

(2) a description of any state security issues expected during the fiscal year, including type of issue, estimated amount, and expected month of sale;

(3) a list of all state security issues outstanding and corresponding debt service schedules for all securities outstanding in a digital and hard copy format; and

(4) a list of all interest rate management agreements, including the associated issue name, effective and termination dates, original and current notional amounts, terms of the agreement (fixed rate paid/variable rate received, variable rate paid/variable rate received), true interest cost, counterparty and counterparty ratings.

(c) An issuer of state securities issued in the form of commercial paper notes shall submit as part of the required semi-annual reports the following information for so long as the issuer has authority to issue commercial paper under program proceedings approved by the Board or exempt from approval pursuant to §181.9 of this title (relating to State Exemptions). The report shall contain the following information:

(1) the aggregate principal amount of commercial paper that the issuer is authorized to issue and have outstanding at any one time;

(2) the aggregate principal amount of commercial paper outstanding as of the end of such semi-annual period;

(3) the aggregate principal amount of commercial paper issued to fund project costs during such semi-annual period; and

(4) a list of the projects for which commercial paper was issued during such semi-annual period.

(d) All issuers whose state securities are subject to review by the Board must file material event notices with the bond finance office when a submission is made by an issuer to the Municipal Securities Rulemaking Board, Nationally Recognized Municipal Securities Information Repositories, or any applicable State Information Depository pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C), as amended, or any analogous state statute. When requested by the bond finance office, such issuers must also file financial information with the office when the information is submitted by an issuer to any of the above-described repositories pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(A) or (B), as amended, or any analogous state statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904154

Robert Kline

Executive Director

Texas Bond Review Board

Effective date: October 8, 2009

Proposal publication date: August 7, 2009

For further information, please call: (512) 463-9891



CHAPTER 190. ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

SUBCHAPTER A. PROGRAM RULES

34 TAC §§190.1 - 190.3, 190.5

The Texas Bond Review Board (BRB) adopts amendments to §§190.1 - 190.3 and §190.5 in order to update the rules pursuant to certain changes made in Senate Bill 2064 of the 81st Legislature. The amended sections are adopted without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5325).

The factual basis for the amendments is to reflect certain changes made to Chapter 1372 of the Government Code in Senate Bill 2064 of the 81st Legislature with respect to private activity bonds.

The 30-day comment period ended September 6, 2009, and BRB did not receive any comments on the proposed amendments. No public hearing was requested under Texas Government Code §2001.029.

The amendments are adopted under Government Code, §1372.004, which gives BRB the authority to adopt rules necessary to accomplish the purposes of Chapter 1372.

The amendments implement the Government Code, Chapter 1372.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 18, 2009.

TRD-200904155

Robert Kline

Executive Director

Texas Bond Review Board

Effective date: October 8, 2009

Proposal publication date: August 7, 2009

For further information, please call: (512) 463-9891



PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §302.6

The State Board of Trustees of the Texas Emergency Services Retirement System (System) adopted, without changes, new rule 34 TAC §302.6, relating to an interest charge on certain past-due contributions from departments participating in the System, at a formal meeting on August 26, 2009, after the proposed new rule had been published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4726).

The new rule imposes an interest charge, based on the System's current assumed rate of investment return, on contributions that are owed the System because of the correction of an error in enrollment of a member or in crediting service to a member, if the error was the fault of a department participating in and reporting to the System and not of the System itself.

No public comments were received on the proposed new rule.

The new rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §863.005, which specifically authorizes the State Board of Trustees to adopt such a rule.

No other statutes, articles, or codes are affected by the new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 21, 2009.

TRD-200904166

Kevin Heyburn

Assistant Attorney General

Office of the Fire Fighters' Pension Commissioner

Effective date: October 11, 2009

Proposal publication date: July 17, 2009

For further information, please call: (512) 463-9935

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of the Fire Fighters' Pension Commissioner

Title 34, Part 11

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes to review all rules of the System in effect on September 1, 2009, and published in the Texas Administrative Code, Title 34, Part 11, Chapters 302, 304, 306, 308, and 310.

The proposal was adopted by the Board at a formal meeting on August 26, 2009, in accordance with the requirements of §2001.039, *Texas Government Code*. The following rules are included in the proposed review:

- §302.1. Definitions.
- §302.2. Benefit Distributions.
- §302.3. Trustee-to-Trustee Transfer.
- §302.4. Reduction or Revocation of Benefits.
- §302.5. Correction of Errors.
- §304.1. Participation by Department.
- §306.1. Prior Service Credit for Members of Participating Departments.
- §308.1. Eligibility for Retirement Annuity.
- §308.2. Service Retirement Annuity.
- §308.3. Disability Retirement Benefits.
- §308.4. Death Benefits.
- §310.1. Officers of State Board.
- §310.2. Additional Duties of State Board.
- §310.3. Review of Actuarial Service.
- §310.4. Standard of Conduct for Financial Advisors and Service Providers.
- §310.5. Local Board of Trustees.
- §310.6. Local Contributions.
- §310.7. Administration of Local Fire Fighter Pension Benefits.
- §310.8. Billings.
- §310.9. Periodic Reports; Administrative Penalties.
- §310.10. Voluntary Payments by Departments.

Comments on the rule review or on any of the listed rules published for review may be submitted in writing to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577, not later than November 30, 2009.

Comments may also be submitted electronically to rules@ffpc.state.tx.us or faxed to (512) 936-3480.

This agency hereby certifies that the proposed rule review has been reviewed by legal counsel and found to be within the agency's legal duty to perform.

TRD-200904167

Kevin Heyburn

Assistant Attorney General

Office of the Fire Fighters' Pension Commissioner

Filed: September 21, 2009

Adopted Rule Reviews

State Board of Dental Examiners

Title 22, Part 5

The State Board of Dental Examiners adopts the review of the rules contained in the Texas Administrative Code, Title 22, Part 5, Chapter 104, concerning Continuing Education, in accordance with §2001.039 of the Texas Government Code. The proposed review was published in the December 12, 2008, issue of the *Texas Register* (33 TexReg 10193).

Staff received a comment from the Texas Dental Hygienists' Association requesting that "on-line" be added to §104.1(3)(C). The change would create more confusion than it would resolve as "on-line jurisprudence assessment" is not used uniformly across the rules."

As a result of the agency's review process the State Board of Dental Examiners readopts §§104.1, 104.2, and 104.4 - 104.6 as the need for these rules continues to exist.

This concludes the review of Chapter 104, Continuing Education.

TRD-200904145

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Filed: September 17, 2009

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 1: 22 TAC Chapter 651--Preamble

Facility Fee Codes	Number of Facilities	Current Fee	Proposed Fee
Registration of Main PT Facility	370	\$314.00	\$215.00
Registration of Additional PT Facility	183	\$124.00	\$215.00
Renewal of Main PT Facility	1121	\$306.00	\$215.00
Renewal of Additional PT Facility	671	\$126.00	\$215.00
Linked Additional Facility Application	122	\$30.00	\$215.00
Linked Facility Application	256	\$40.00	\$215.00
Linked Renewal Additional	272	\$30.00	\$215.00
Linked Renewal Primary	368	\$40.00	\$215.00
Registration of Main OT Facility	50	\$314.00	\$215.00
Registration of Additional OT Facility	23	\$124.00	\$215.00
Renewal of Main OT Facility	173	\$306.00	\$215.00
Renewal of Additional OT Facility	52	\$126.00	\$215.00

Figure 2: 22 TAC Chapter 651--Preamble

Samples of Possible Owner Configurations	Number of Owners	Fees Before	Fees After	Difference Per Year
PT or OT facility (1 facility)	864	\$306	\$215	(\$91)
PT or OT with 1 additional facility (2)	110	\$432	\$430	(\$2)
PT or OT with 2 additional facilities (3)	61	\$558	\$645	\$87
PT and linked OT (2)	442	\$346	\$430	\$84
PT and linked OT with PT additional (>3)	33	Varies	Varies	Varies
PT and linked OT with PT additional and OT linked - 4 facilities*	53	\$502	\$860	\$358
PT and linked OT with PT additional and OT linked - 6 facilities*	20	\$658	\$1,290	\$632
PT and linked OT with PT additional and OT linked - other	38	Varies	Varies	Varies
* Examples of 2 largest populations within category				

State-Listed Threatened Species in Texas

MAMMALS

Margay Leopardus (*Felis* (= *Felis*) *wiedii*)
Louisiana Black Bear (*Ursus americanus luteolus*)
Black Bear (*Ursus americanus*)
White-nosed Coati (*Nasua narica*)
Southern Yellow Bat (*Lasiurus ega*)
Spotted bat (*Euderma maculatum*)
Rafinesque's Big-eared Bat (*Corynorhinus rafinesquii*)
Texas Kangaroo Rat (*Dipodomys elator*)
Coues' Rice Rat (*Oryzomys couesi*)
Palo Duro Mouse (*Peromyscus truei comanche*)
Gervais' Beaked Whale (*Mesoplodon europaeus*)
Goose-beaked Whale (*Ziphius cavirostris*)
Pygmy Sperm Whale (*Kogia breviceps*)
Dwarf Sperm Whale (*Kogia simus*)
Killer Whale (*Orcinus orca*)
False Killer Whale (*Pseudorca crassidens*)
Short-finned Pilot Whale (*Globicephala macrorhynchus*)
Pygmy Killer Whale (*Feresa attenuata*)
Atlantic Spotted Dolphin (*Stenella frontalis*)
Rough-toothed Dolphin (*Steno bredanensis*)

BIRDS

Bald Eagle (*Haliaeetus leucocephalus*)
Common Black-hawk (*Buteogallus anthracinus*)
Gray Hawk (*Asturina nitidus*)
White-tailed Hawk (*Buteo albicaudatus*)
Zone-tailed Hawk (*Buteo albonotatus*)
Peregrine Falcon (*Falco peregrinus anatum*)
Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)
Mexican Spotted Owl (*Strix occidentalis lucida*)
Piping Plover (*Charadrius melodus*)
Reddish Egret (*Egretta rufescens*)
White-faced Ibis (*Plegadis chihi*)
Wood Stork (*Mycteria americana*)
Swallow-tailed Kite (*Elanoides forficatus*)
Sooty Tern (*Sterna fuscata*)
Northern Beardless-tyrannulet (*Camptostoma imberbe*)
Rose-throated Becard (*Pachyrhamphus aglaiae*)
Tropical Parula (*Parula pitaiayumi*)
Bachman's Sparrow (*Aimophila aestivalis*)
Texas Botteri's Sparrow (*Aimophila botterii texana*)
Arizona Botteri's Sparrow (*Aimophila botterii arizonae*)

REPTILES

Green Sea Turtle (*Chelonia mydas*)
Loggerhead Sea Turtle (*Caretta caretta*)

Alligator Snapping Turtle (*Macrochelys temminckii*)
 Cagle's Map Turtle (*Graptemys caglei*)
 Chihuahuan Mud Turtle (*Kinosternon hirtipes murrayi*)
 Texas Tortoise (*Gopherus berlandieri*)
 Reticulated Gecko (*Coleonyx reticulatus*)
 Reticulate Collared Lizard (*Crotaphytus reticulatus*)
 Texas Horned Lizard (*Phrynosoma cornutum*)
 Mountain Short-horned Lizard (*Phrynosoma hernandesi*)
 Scarlet Snake (*Cemophora coccinea*)
 Black-striped Snake (*Coniophanes imperialis*)
 Indigo Snake (*Drymarchon corais*)
 Speckled Racer (*Drymobius margaritiferus*)
 Northern Cat-eyed Snake (*Leptodeira septentrionalis*)
 Louisiana Pine Snake (*Pituophis ruthveni*)
 Brazos Water Snake (*Nerodia harteri*)
 Smooth Green Snake (*Liochlorophis vernalis*)
 Trans-Pecos Black-headed Snake (*Tantilla cucullata*)
 Chihuahuan Desert Lyre Snake (*Trimorphodon wilkinsonii*)
 Timber (Canebrake) Rattlesnake (*Crotalus horridus*)

AMPHIBIANS

San Marcos Salamander (*Eurycea nana*)
 Cascade Caverns Salamander (*Eurycea latitans*)
 Comal Blind Salamander (*Eurycea tridentifera*)
 Blanco Blind Salamander (*Eurycea robusta*)
 Black-spotted Newt (*Notophthalmus meridionalis*)
 South Texas Siren (large form) (*Siren* sp.1)
 Mexican Tree Frog (*Smilisca baudinii*)
 White-lipped Frog (*Leptodactylus fragilis*)
 Sheep Frog (*Hypopachus variolosus*)
 Mexican Burrowing Toad (*Rhinophrynus dorsalis*)

FISHES

Shovelnose Sturgeon (*Scaphirhynchus platyrhynchus*)
 Paddlefish (*Polyodon spathula*)
 Mexican Stoneroller (*Campostoma ornatum*)
 Rio Grande Chub (*Gila pandora*)
 Blue Sucker (*Cycleptus elongatus*)
 Creek Chubsucker (*Erimyzon oblongus*)
 Toothless Blindcat (*Trogloglanis pattersoni*)
 Widemouth Blindcat (*Satan eurystomus*)
 Conchos Pupfish (*Cyprinodon eximius*)
 Pecos Pupfish (*Cyprinodon pecosensis*)
 Rio Grande Darter (*Etheostoma grahami*)
 Blackside Darter (*Percina maculata*)
 Opossum Pipefish (*Microphis brachyurus*)
 River Goby (*Awaous banana*)
 Mexican Goby (*Ctenogobius claytonii*)
 San Felipe Gambusia (*Gambusia clarkhubbsi*)
 Blotched Gambusia (*Gambusia senilis*)
 Devils River Minnow (*Dionda diaboli*)

Arkansas River Shiner (*Notropis girardi*)
Bluehead Shiner (*Pteronotropis hubbsi*)
Chihuahua Shiner (*Notropis chihuahua*)
Bluntnose Shiner (*Notropis simus*)
Proserpine Shiner (*Cyprinella proserpina*)

MOLLUSCS

False spike (*Quadrula mitchelli*)
Golden orb (*Quadrula aurea*)
Louisiana Pigtoe (*Pleurobema ridellii*)
Mexican fawnsfoot (*Truncilla cognata*)
Salina mucket (*Potamilus metnecktayi*)
Sandbank pocketbook (*Lampsilis satura*)
Smooth pimpleback (*Quadrula houstonensis*)
Southern hickorynut (*Obovaria jacksoniana*)
Texas fatmucket (*Lampsilis bracteata*)
Texas fawnsfoot (*Truncilla macrodon*)
Texas heelsplitter (*Potamilus amphichaenus*)
Texas hornshell (*Popenaias popeii*)
Texas pigtoe (*Fusconaia askewi*)
Texas pimpleback (*Quadrula petrina*)
Triangle pigtoe (*Fusconaia lananensis*)

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Award of a Major Consulting Contract

The Office of the Attorney General (OAG) announces the award of contract #10-C0011 to IPS Advisors, Inc., an entity with a principal place of business at 8080 North Central Expressway, Dallas, Texas 75206. The contractor will provide consulting services related to the development and implementation of a group health insurance program for children in the Title IV-D caseload. The total value of the contract will not exceed \$250,000.00. The contract was signed on September 18, 2009, and will expire on August 31, 2010 unless extended or terminated sooner by the parties. The Contractor must complete required reports for a minimum of five major phases and any additional tasks before August 31, 2010.

Point of contact: Ted N. White, Assistant Attorney General, Office of the Attorney General, Child Support Division. (e-mail: Ted.White@cs.oag.state.tx.us)

For information regarding this publication, contact Zindia Thomas, Agency liaison, at (512) 936-9901.

TRD-200904212

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: September 21, 2009



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 11, 2009, through September 17, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on

the web site on September 23, 2009. The public comment period for this project will close at 5:00 p.m. on October 23, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: PA Waterfront, LP; Location: The project is located at the Newport Beach Village property on the east side of State Highway (SH) 361, approximately 4 miles south of Port Aransas, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Aransas, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 686883; Northing: 3072886. Project Description: The applicant proposes to fill six palustrine emergent wetlands that total 5.82 acres to construct a residential development. As mitigation, the applicant proposes to create 5.0 acres of wetlands, enhance 0.53 acres of wetlands, and preserve 19.24 acres of wetlands, all which are located on the west side of SH 361 and within the immediate project area of the Texas Gulf and Harbor Newport Marina which received Department of the Army permit 23357 in December 2007. CCC Project No.: 09-0246-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00430 is being evaluated under d §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200904234

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: September 23, 2009



Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective October 1, 2009

The 1 percent local sales and use tax will become effective October 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Hardin (Liberty Co)	2146121	.010000	.077500

A 1 1/4 percent local sales and use tax that includes the 1 percent city sales and use tax, and an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Iola (Grimes Co)	2093053	.012500	.080000

A 1 1/2 percent local sales and use tax that includes the 1 percent city sales and use tax, and an additional 1/2 percent city sales and use tax for economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4B, will become effective October 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Lakewood Village (Denton Co)	2061346	.015000	.082500

A 2 percent local sales and use tax that includes the 1 percent city sales and use tax, an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code, an additional 1/4 percent city sales and use tax for economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4B, and an additional 1/2 percent city sales and use for economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4A will become effective October 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Von Ormy (Bexar Co)	2015245	.020000	.082500

The 1/2% San Antonio MTA tax has been repealed and will be abolished effective September 30, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Von Ormy (Bexar Co)	2015245	.020000	.082500

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2009 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Prairie View (Waller Co)	2237041	.017500	.082500
Reno (Parker Co)	2184062	.012500	.080000
Reno (Tarrant Co)	2184062	.012500	.075000
Shoreacres (Chambers Co)	2101259	.012500	.080000
Shoreacres (Harris Co)	2101259	.012500	.075000

An additional 1/4 percent city sales and use tax for property tax relief will become effective October 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Hickory Creek (Denton Co)	2061186	.020000	.082500

An additional 1/2 percent city sales and use tax for property tax relief will become effective October 1, 2009 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Coldspring (San JacintoCo)	2204022	.015000	.082500
Leakey (Real Co)	2193025	.015000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4B will be abolished, effective September 30, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Shenandoah (Montgomery Co)	2170095	.015000	.082500

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4B will become effective October 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Alto (Cherokee Co)	2037016	.015000	.082500

An additional 1 percent city sales and use tax for improving and promoting economic and industrial development that includes an additional 1/2 percent as permitted under Chapter 505 of the Texas Local Government Code, Section 4A, and an additional 1/2 percent as permitted under Chapter 505 of the Texas Local Government Code, Section 4B will become effective October 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Knollwood (Grayson Co)	2091162	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4A will be abolished, effective September 30, 2009 and the adoption of an additional 1/8 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Godley (Johnson Co)	2126090	.016250	.078750

The additional 1/2 percent city sales and use tax for property tax relief will be reduced to 1/4 percent and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2009 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Balch Springs (Dallas Co)	2057119	.020000	.082500

An additional 1 percent city sales and use tax that includes the adoption of a 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code, an additional 1/4 percent for property tax relief, and an additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4B will become effective October 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Higgins (Lipscomb Co)	2148012	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4B will be reduced to 1/4 percent and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2009 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Thorndale (Milam Co)	2166019	.015000	.082500
Thorndale (Williamson Co)	2166019	.015000	.077500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4B will be abolished and the additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Section 4A will be reduced to 1/4 percent effective September 30, 2009 and the adoption of an additional 1/2 percent sales and use tax for property tax relief and the adoption of an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2009 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Jarrell (Williamson Co)	2246139	.020000	.082500

An additional 1/4 percent special purpose district sales and use tax for Library Districts as permitted under Chapter 326 of the Local Government Code will become effective October 1, 2009 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
East Travis County Gateway Library District	5227579	.005000	.077500

A 1/4 percent special purpose district sales and use tax will become effective October 1, 2009 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Richwood Crime Control and Prevention District	5020505	.002500	SEE NOTE 1
Williamson County Emergency Services District No. 7	5246521	.002500	SEE NOTE 2

A 3/8 percent special purpose district sales and use tax will become effective October 1, 2009 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Comal County Emergency Services District No. 1	5046541	.003750	SEE NOTE 3

A 1/2 percent special purpose district sales and use tax will become effective October 1, 2009 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Aransas Pass Crime Control and Prevention District	5205511	.005000	SEE NOTE 4
Lakewood Village Municipal Development District	5061596	.005000	SEE NOTE 5
Shenandoah Municipal Development District	5170665	.005000	SEE NOTE 6

A 5/8 percent special purpose district sales and use tax will become effective October 1, 2009 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Comal County Emergency Services District No. 4	5046550	.006250	SEE NOTE 7
Comal County Emergency Services District No. 5	5046569	.006250	SEE NOTE 8

A 1 percent special purpose district sales and use tax will become effective October 1, 2009 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Harris County Emergency Services District No. 50	5101749	.010000	SEE NOTE 9

A 1 1/2 percent special purpose district sales and use tax will become effective October 1, 2009 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Montgomery County Emergency Services District No. 4	5170674	.015000	SEE NOTE 10
Orange County Emergency Services District No. 3	5181500	.015000	SEE NOTE 11

NOTE 1: The boundaries of the Richwood Crime Control and Prevention District are the same boundaries as the city of Richwood. Contact the district representative at (979) 265-2082 for additional information.

NOTE 2: The Williamson County Emergency Services District No. 7 is located in the northern portion of Williamson County. The city of Florence is located entirely within the district. The unincorporated areas of Williamson County in ZIP Codes 76527 and 78633 are partially located within the Williamson County Emergency Services District No. 7. Contact the district

representative at (254) 793-2591 for additional boundary information.

NOTE 3: The Comal County Emergency Services District No. 1 is located in the western portion of Comal County, which has a county sales and use tax. The district does **not** include any area within the cities of Bulverde or Fair Oaks Ranch. The district totally overlaps territory in Comal County Emergency Services District No. 4 and Comal County Emergency Services District No. 5 and includes areas in the Bulverde Area Rural Library District and the Canyon Lake Community Library District. The unincorporated areas of Comal County in ZIP Codes 78006, 78070, 78132, 78133, 78163, and 78606 are partially located in the Comal County Emergency Services District No. 1. Contact the district representative at (830) 980-9452 for additional boundary information.

NOTE 4: The boundary of the Aransas Pass Crime Control District is the portion of the city of Aransas Pass located in Nueces and San Patricio counties. The district does not include any area of the city of Aransas Pass within Aransas County. The Aransas Pass Development District, which has a special purpose district sales and use tax, is located entirely within the Aransas Pass Crime Control District. Contact the district representative at (361) 758-5301 for additional boundary information.

NOTE 5: The Lakewood Municipal Development District is located in the central portion of Denton County. The development district has the same boundaries as the city of Lakewood Village and its extra-territorial jurisdiction. The Lakewood Municipal Development District is located within ZIP Code 75068. Contact the district representative at (972) 294-5555 for additional boundary information.

NOTE 6: The Shenandoah Municipal Development District is located in the south-central portion of Montgomery County. The development district has the same boundaries as the city Shenandoah and its extra-territorial jurisdiction. Montgomery County Emergency Services District No. 4 partially overlaps the portion of the Shenandoah Municipal Development District in the city of Shenandoah's extra-territorial jurisdiction. The Shenandoah Municipal Development District is located within ZIP Code 77381. Contact the district representative at (281) 298-5522 for additional boundary information.

NOTE 7: The Comal County Emergency Services District No. 4 is located in the western portion of Comal County, which has a county sales and use tax. The district does not include any area within the city of Bulverde. The district partially overlaps territory in the Comal Emergency Services District No. 1, the Bulverde Area Rural Library District, and the Canyon Lake Community Library District. The unincorporated areas of Comal County in ZIP Codes 78070, 78132, 78133 and 78606 are partially located in the Comal County Emergency Services District No. 4. Contact the district representative at (830) 885-2968 for additional boundary information.

NOTE 8: The Comal County Emergency Services District No. 5 is located in the southwest portion of Comal County, which has a county sales and use tax. The district does not include any area within the cities of Bulverde or Fair Oaks Ranch. The district partially overlaps territory in the Comal County Emergency Services District No. 1 and the Bulverde Area Rural Library District. The unincorporated area of Comal County in ZIP Codes 78006, 78070 and 78163 are partially located in the Comal County Emergency Services District No. 5. Contact the district representative at (830) 980-3883 for additional boundary information.

NOTE 9: The Harris County Emergency Services District No. 50 is located in the east-central portion

of Harris County. The district's boundaries include a small area which is also responsible for collecting and remitting sales and use tax to the city of Houston due to a Strategic Partnership Agreement. The district does **not** include any portion of the Houston MTA. The unincorporated areas of Harris County in ZIP Codes 77015 and 77530 are partially in the district. Contact the district representative at (713) 652-6500 for additional boundary information.

NOTE 10: The Montgomery County Emergency Services District No. 4 is located in the south-central portion of Montgomery County. Montgomery County Emergency Services District No. 4 partially overlaps a portion of the Shenandoah Municipal Development District located in the city of Shenandoah's extra-territorial jurisdiction, which has a special purpose district sales and use tax. The unincorporated areas of Montgomery County in ZIP Codes 77381, 77384 and 77385 are partially located within the district. Contact the district representative at (936) 321-0999 for additional boundary information.

NOTE 11: The Orange County Emergency Services District No. 3 is located in the northeast portion of Orange County, which has a county sales and use tax. The unincorporated area of Orange County in ZIP Code 77632 is partially located within the Orange County Emergency Services District No. 3. Contact the district representative at (409) 746-9640 for additional boundary information.

TRD-200904235
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: September 23, 2009



Notice of Request for Applications

Pursuant to Chapter 403, §403.352 and §403.358, Texas Government Code; Chapter 134, §134.002 and §134.008, Texas Education Code; and House Bill Nos. 3 and 1935, 81st Texas Legislature, Regular Session (2009), the Comptroller of Public Accounts (Comptroller), announces this Notice of Availability and Request for Applications (RFA # E-G-1) and invites applications from qualified and interested public junior colleges and public technical institutes for Jobs and Education for Texans' (JET) grants. These grants may only be used: 1) to support courses or programs that prepare students for career employment in occupations that are identified by local business as being in high demand; 2) to finance the initial costs of career and technical education courses or program development, including the costs of purchasing equipment, and other expenses associated with the development of an appropriate course; and 3) to finance a career and technical education course or program that leads to a license, certificate, or postsecondary degree and that meets the requirements consistent with the terms of the RFA and this notice. The Comptroller reserves the right to award more than one grant under the terms of this RFA. If a grant award is made under the terms of this RFA, the recipient should anticipate an effective date no earlier than December 15, 2009, or as soon thereafter as practical.

Contact: Parties interested in submitting an application may contact the JET Program, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 510, Austin, Texas 78774, (512) 936-2064. The Comptroller will mail copies of the application and instructions only to those parties specifically requesting a copy. The application and instructions will be available at <http://www.everychanceeverytexan.org/funds> after 10:00 a.m. CZT on Friday, October 2, 2009, and during normal business hours thereafter.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, October 15, 2009. Prospective applicants are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-4208 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to Kevin Deiters, Director, Educational Opportunities & Investment Division, Comptroller of Public Accounts, at: 111 E. 17th St., Room 510, Austin, Texas 78774 and be signed by an official of that entity. On or about Friday, October 21, 2009, the Comptroller expects to post responses to questions at <http://www.everychanceeverytexan.org/funds>. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office. Closing Date: Applications must be delivered in the Issuing Office to the attention of the Director no later than 2:00 p.m. CZT, on Friday, November 6, 2009. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying the timely receipt of Applications in the Issuing Office.

Evaluation Criteria: Applications will be evaluated under the evaluation criteria outlined in the application instructions. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to make a grant award or to execute a contract on the basis of this notice or RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or RFA.

The anticipated schedule of events pertaining to this grant is as follows: Issuance of RFA - October 2, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - October 15, 2009, 2:00 p.m. CZT; Official Responses to Questions posted - October 21, 2009; Proposals Due - November 6, 2009, 2:00 p.m. CZT; Grant Award/Contract Execution - December 15, 2009, or as soon thereafter as practical; Commencement of Grant Funding - December 22, 2009 or as soon thereafter as practical.

TRD-200904240

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/28/09 - 10/04/09 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/28/09 - 10/04/09 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/09 - 10/31/09 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/09 - 10/31/09 is 5.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200904216

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 22, 2009

Texas Education Agency

Notice of Correction: Request for Applications Concerning Collaborative Dropout Reduction Pilot Program, Cycle 3

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-10-102 concerning the Collaborative Dropout Reduction Pilot Program, Cycle 3, grant in the September 25, 2009, issue of the *Texas Register* (34 TexReg 6679).

The TEA is amending the criteria under which applicants are eligible to apply. School districts and open-enrollment charter schools are eligible to participate in the pilot program if, during each of the three school years preceding application for this grant (i.e., 2006-2007, 2007-2008, and 2008-2009), 55 percent or more of students enrolled in the district or open-enrollment charter school were identified as being economically disadvantaged. The second eligibility criteria included in the September 25, 2009, notice, which allowed eligibility for a school district if the district's annual dropout rate for Grades 7-12 was in the top ten percent of its comparable size category for each of school years 2005-2006, 2006-2007, and 2007-2008, no longer applies.

Further Information. For clarifying information about the RFA, contact Donnell Bilsky, Division of Discretionary Grants, TEA, (512) 463-9269.

TRD-200904238

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: September 23, 2009

Request for Applications Concerning Mathematics Instructional Coaches Pilot Program, Cycle 3

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-102 from Texas local education agencies, open-enrollment charter schools, and shared services arrangements of school districts and/or open-enrollment charter schools. A school district or open-enrollment charter school in Texas is eligible to apply for funding under this grant program if it meets either of the following requirements: (1) 60 percent or more of students enrolled in the district were identified as being economically disadvantaged for each of the preceding three school years (i.e., 2006-2007, 2007-2008, and 2008-2009); or (2) 70 percent or less of students across secondary grade levels met the state standard on the first administration of the mathematics portion of the Texas Assessment of Knowledge and Skills for each of the preceding three school years (i.e., 2006-2007, 2007-2008, and 2008-2009).

A school district or open-enrollment charter school that has not been serving students for the three preceding school years is not eligible to apply for funding under this grant program. School districts and open-enrollment charter schools that received a grant award under the Mathematics Instructional Coaches Pilot Program, Cycle 1 or Cycle 2, are not eligible to apply for a Cycle 3 grant. An eligible school district that also serves as an approved service provider under this program may not use grant funds from this program to pay for mathematics instructional coaching and professional development from the district acting as its own approved service provider. The list of school districts and open-enrollment charter schools eligible for grant funding is posted on the TEA Grant Opportunities page at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>.

Description. The purpose of the Mathematics Instructional Coaches Pilot Program, Cycle 3, grant is to allow districts to contract with an approved service provider to provide assistance in developing the content knowledge and instructional expertise of teachers who instruct students in mathematics at the middle, junior high, or high school levels. The goals of the grant program are to plan, design, and implement pilot programs to support the improvement of secondary mathematics teachers' content knowledge and instructional expertise; implement a research-based program with a strong emphasis on improving mathematics teachers' abilities to increase at-risk student performance in mathematics; institute a rigorous and engaging professional development program that redesigns structural and collaborative practices for mathematics teachers; develop the skills and knowledge of school leaders in the area of mathematics instruction; and provide models of excellence in coaching secondary mathematics teachers to improve their knowledge and expertise.

Dates of Project. The Mathematics Instructional Coaches Pilot Program, Cycle 3, grant will be implemented during the 2009-2010, 2010-2011, and 2011-2012 school years. Applicants should plan for a starting date of no earlier than April 1, 2010, and an ending date of no later than March 31, 2012.

Project Amount. Funding will be provided for approximately 25 projects, with awards ranging from \$20,000 to a maximum of \$250,000 for the 2009-2012 project period. This project is funded 100 percent with state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project.

Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in Part 2: Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, December 1, 2009, to be eligible to be considered for funding.

TRD-200904237

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 23, 2009

◆ ◆ ◆ **Employees Retirement System of Texas**

Request for Proposals to Conduct Eligibility Audits

In accordance with §1551.055 and §1551.062 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is soliciting proposals from qualified auditing firms to perform dependent eligibility audits of the participants enrolled in the health programs of the Texas Employees Group Benefits Program ("GBP"). A qualified provider of auditing services ("Auditor") shall supply the level of services required in the Request for Proposal ("RFP") and meet other requirements that are in the best interest of ERS, the GBP health programs, their participants, or the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by and satisfactory to ERS.

As provided in Chapter 1551 of the Texas Insurance Code, ERS is the administrator for the GBP which provides health benefits to over 264,000 state agency and certain higher education employees, retirees, and approximately 198,000 dependents. ERS is responsible for contracting with health carriers and third party administrators to provide coverage for GBP participants or administer such coverage throughout the state of Texas. The services requested and described in the RFP have been broken into two separate scopes of audit services: 1) an initial 100% dependent eligibility audit, and 2) an ongoing annual

audit for newly added dependents enrolled in the GBP health programs. Qualified Auditors shall submit a proposal and bid response materials to provide services for both audit scopes. An Auditor wishing to respond to this request shall meet the minimum requirements as well as those other evaluation criteria as more fully specified in Article II of the RFP. Each proposal will be evaluated individually and relative to the proposal of other qualified Auditors.

The RFP will be available in mid-October from ERS' website and will include documents for the Auditor's review and response. To access the secured portion of the RFP website, interested Auditors shall email their request to the attention of IVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall reflect the Auditor's legal name, street address, phone and fax numbers, and email address for the organization's direct point of contact. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP when the document is published on the Vendor portion of the ERS website.

General questions concerning the RFP and/or ancillary bid materials should be sent to the IVendor Mailbox where responses, if applicable, are updated frequently. The RFP will be discussed at a web conference scheduled for Tuesday, November 3, 2009, beginning at 2:00 p.m. (CT). Auditors interested in bidding are required to register for participation in the web conference no later than close of business on Friday, October 30, 2009, by emailing an acknowledgment to the IVendor Mailbox as referenced above.

To be eligible for consideration, all Auditors are required to submit a total of six (6) sets of the proposal in a sealed container. One (1) proposal shall be labeled as an "Original" and include a fully executed signature page and Business Associate Agreement, **signed in blue ink**, and without amendment or revision. Two (2) additional duplicates of the proposal, including all required exhibits, shall be provided in printed format. The remaining three (3) complete copies shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of financial materials) may be reflected on the CD-ROMs. All materials shall be executed as noted above and must be received by ERS no later than 12:00 Noon (CT) on Tuesday, November 24, 2009.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of ERS, the GBP health programs, their participants, or the state of Texas. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the GBP health programs, their participants or the state of Texas.

TRD-200904213

Paula A. Jones
General Counsel and Chief Compliance Office
Employees Retirement System of Texas
Filed: September 21, 2009

◆ ◆ ◆ **Revised Notice - Request for Proposals to Conduct Audits of Certain Health and Welfare and Prescription Drug Programs**

This Notice takes place of the previous Notice published in the September 25, 2009, issue of the *Texas Register* (34 TexReg 6680).

In accordance with §1551.055 and §1551.062 of the Texas Insurance Code ("TIC"), the Employees Retirement System of Texas ("ERS") is soliciting proposals from qualified auditing firms to perform audits of selected Carriers, HMOs and Third Party Administrators of the Health-Select Programs, which may include life, health, medical, and pharmacy benefit programs, provided to Group Benefits Program ("GBP") participants under the GBP beginning September 1, 2008 through August 31, 2012. A qualified provider of auditing services ("Vendor") shall supply the level of services required in the Request for Proposal ("RFP") and meet other requirements that are in the best interest of ERS, the GBP health and welfare programs, its participants, or the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by and satisfactory to ERS.

As provided in Chapter 1551 of the TIC, ERS is the administrator for the GBP which provides health and welfare benefits to over 500,000 state agencies and certain higher education employees, retirees, and their dependents. ERS is responsible for contracting with health, dental, life, and disability carriers, and third party administrators to provide coverage for GBP participants or administer such coverage throughout the state of Texas. The services requested and described in the RFP have been broken into two separate scopes of audit services: 1) statistical sample audit for the GBP health and welfare programs, and 2) a full, pharmacy benefit management contract audit. Qualified Vendors may submit a proposal and bid response materials to provide services for one, or both audit scopes. A Vendor wishing to respond to this request shall meet the minimum requirements as well as those other evaluation criteria as more fully specified in Article II of the RFP. Each proposal will be evaluated individually and relative to the proposal of other qualified Vendors.

The RFP will be available in late-September from ERS' website and will include documents for the Vendor's review and response. To access the secured portion of the RFP website, interested Vendors shall email their request to the attention of IVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall reflect the Vendor's legal name, street address, phone and fax numbers, and email address for the organization's direct point of contact. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP when the document is published on the Vendor portion of the ERS website.

General questions concerning the RFP and/or ancillary bid materials should be sent to the IVendor Mailbox where responses, if applicable, are updated frequently. The PBM scope of the RFP will be discussed at a web conference on Wednesday, October 21, 2009, beginning at 2:00 p.m. (CT). Vendors interested in bidding on the PBM scope of services are required to register for participation in the web conference no later than close of business on Friday, October 16, 2009, by emailing an acknowledgment to the IVendor Mailbox as referenced above.

To be eligible for consideration, all Vendors are required to submit a total of six (6) sets of the proposal in a sealed container. One (1) proposal shall be labeled as an "Original" and include a fully executed Signature page and Business Associate Agreement, **signed in blue ink**, and without amendment or revision. Three (3) additional duplicates of the proposal, including all required exhibits, shall be provided in printed format. Finally, two (2) complete copies shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of financial materials) may be reflected on the CD-ROMs. All materials shall be executed as noted above and must be received by ERS no later than 12:00 Noon (CT) on November 11, 2009.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of ERS, the GBP health and welfare programs, its participants or the state of Texas. ERS also reserves the right to reject any proposal submitted that does

not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the GBP health and welfare programs, its participants or the state of Texas.

TRD-200904239

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: September 23, 2009

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 2, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 2, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Sarkis Janbazian dba 380 Chevron; DOCKET NUMBER: 2008-0474-PST-E; IDENTIFIER: RN101560191; LOCATION: Denton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; 30 TAC §334.49(a)(2) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the Station and make them immediately available for review; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects; PENALTY:

\$12,000; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Arfa & Shifa Business, Inc. dba Oaks Cleaners; DOCKET NUMBER: 2007-0560-MLM-E; IDENTIFIER: RN104207634; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11(a), by failing to conduct a hazardous waste determination and classification; 30 TAC §335.9(a)(1)(B), by failing to maintain records of all hazardous waste activities regarding the quantity of waste generated; 30 TAC §335.69(a)(3), by failing to mark or clearly label each container used to store hazardous waste with the words "Hazardous Waste"; 30 TAC §337.20(e)(3)(A), by failing to provide secondary containment around each storage area for dry cleaning solvent waste; and 30 TAC §337.11(e) and THSC, §374.102(e), by failing to renew its dry cleaning registration; PENALTY: \$6,898; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 293-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: City of Beeville; DOCKET NUMBER: 2009-0754-PWS-E; IDENTIFIER: RN101419133; LOCATION: Beeville, Bee County; TYPE OF FACILITY: municipal public water supply (PWS); RULE VIOLATED: 30 TAC §290.42(d)(5), by failing to provide a flow measuring device; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage, and pressure maintenance facilities; 30 TAC §290.41(e)(2)(C), by failing to establish a radium restricted zone of 200 feet from the raw water intake prohibiting recreational activities and trespassing; 30 TAC §290.46(s)(2)(B)(i), by failing to properly calibrate the benchtop turbidimeter; 30 TAC §290.46(f)(2), (3)(A)(iv) and (B)(vi), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.110(b)(4) and §290.46(d)(2)(B) and THSC, §341.0315(c), by failing to maintain a minimum chloramine residual of at least 0.5 milligrams per liter (mg/L) throughout the distribution system; 30 TAC §290.42(m) and §290.43(e), by failing to enclose the water treatment plant and elevated storage tanks with an intruder-resistant fence; 30 TAC §290.43(c)(4), by failing to provide all water storage tanks with a water level indicator; 30 TAC §290.43(c)(3), by failing to maintain the overflow on the facility's storage tanks in strict accordance with current American Water Works Association design standards; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices at the facility; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's two ground storage tanks; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.110(d)(2), by failing to measure the free chlorine residual within the distribution system using the amperometric titration method, ferrous titration method, or a diethyl-p-phenyldiamine colorimetric method which measures for free chlorine residual to a minimum accuracy of plus or minus 0.1 mg/L; and 30 TAC §290.119(a)(2), by failing to analyze samples used to determine compliance with the treatment technique requirements and maximum residual disinfectant levels by a laboratory approved by the Executive Director; PENALTY: \$5,161; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Capital Metropolitan Transportation Authority; DOCKET NUMBER: 2009-1063-EAQ-E; IDENTIFIER: RN104004593; LOCATION: Austin, Travis County; TYPE OF FACILITY: bus and rail maintenance; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an aboveground storage tank facility plan; PENALTY: \$750; ENFORCEMENT COORDINA-

TOR: Carlie Konkol, (361) 825-3100; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(5) COMPANY: CIRCLE BAR TRUCK CORRAL, INC. dba Circle Truck Corral; DOCKET NUMBER: 2009-0666-PST-E; IDENTIFIER: RN102010519; LOCATION: Ozona, Crockett County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records; 30 TAC §334.72(3), by failing to report a suspected release to the agency; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substances; PENALTY: \$28,225; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: Double V, Inc. dba Greens Shell; DOCKET NUMBER: 2009-1182-PST-E; IDENTIFIER: RN104617477; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$3,047; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: DRJO ENTERPRISE, INC. dba Crystal Car Wash; DOCKET NUMBER: 2009-1010-PST-E; IDENTIFIER: RN101540466; LOCATION: Garland, Dallas County; TYPE OF FACILITY: car wash and oil change and lube; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST for releases; PENALTY: \$4,933; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Duval County Conservation and Reclamation District; DOCKET NUMBER: 2009-1200-MWD-E; IDENTIFIER: RN104498597; LOCATION: Duval County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010067002, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; PENALTY: \$1,070; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(9) COMPANY: Helena Chemical Company; DOCKET NUMBER: 2009-0871-AIR-E; IDENTIFIER: RN101297968; LOCATION: Iowa Park, Wichita County; TYPE OF FACILITY: grain elevator and fertilizer blending plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain permit authorization for a source of air emissions or satisfy the conditions of a Permit by Rule prior to construction and operation of anhydrous ammonia storage tanks and bulk dry fertilizer handling equipment; 30 TAC §116.110(e) and THSC, §382.085(b), by failing to notify the commission within 30 days from the date of a change in ownership of an existing facility which may emit air contaminants; 30 TAC §116.115(c), New Source Review (NSR) Permit Number 3805, Special Condition (SC) Number 3A, and THSC, §382.085(b), by failing to equip load out devices with drop socks at drop points to minimize emissions; 30 TAC §116.115(c), NSR Permit Number 3805, SC Number 3B, and THSC, §382.085(b), by failing to construct a shroud or enclosure to minimize emissions at the grain receiving locations; and 30 TAC §116.115(b)(2)(E) and THSC, §382.085(b), by failing to

maintain a copy of NSR Permit Number 3805 at the plant; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 1977 Industrial Road, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: City of Karnes City; DOCKET NUMBER: 2009-0814-MWD-E; IDENTIFIER: RN101610111; LOCATION: Karnes County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010352001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a), by failing to comply with permit effluent limits for five-day biochemical oxygen demand, total suspended solids (TSS), and pH; PENALTY: \$9,030; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Lee-Var, Inc. dba Palmer of Texas; DOCKET NUMBER: 2009-0552-AIR-E; IDENTIFIER: RN100213594; LOCATION: Andrews, Andrews County; TYPE OF FACILITY: fiberglass tank manufacturing plant; RULE VIOLATED: 30 TAC §101.20(2) and §122.143(4), 40 CFR §63.5805(b), Federal Operating Permit (FOP) Number O-02704, Special Terms and Conditions (STC) Number 1D, Agreed Order Docket Number 2007-1724-AIR-E, Ordering Provision Numbers 2.a. and 2.b., and THSC, §382.085(b), by failing to comply with emission standards for hazardous air pollutants (HAPs); 30 TAC §101.20(2) and §122.143(4), 40 CFR §63.3910(c) and §63.3920(a)(1)(ii), FOP Number O-02704, STC Number 1D, THSC, §382.085(b), by failing to timely submit two Subpart M notification of compliance status reports; 30 TAC §101.20(2) and §122.143(4), 40 CFR §63.3890(b)(1), FOP Number O-02704, STC Number 1D, and THSC, §382.085(b), by exceeding the 12-month HAP emission limit of 2.6 pounds HAPs/gallon of coating solids; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain air permit authorization for the surface coating and abrasive blasting operations; PENALTY: \$43,750; Supplemental Environmental Project offset amount of \$21,875 applied to Texas Parent Teacher Association - *Clean School Bus Program*; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(12) COMPANY: Lower Colorado River Authority; DOCKET NUMBER: 2009-0815-MWD-E; IDENTIFIER: RN102996642; LOCATION: Matagorda County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014404001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limits; PENALTY: \$950; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: MK1 Construction Services, L.L.C.; DOCKET NUMBER: 2009-0978-AIR-E; IDENTIFIER: RN105750483; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: flowable fill manufacturing and supply plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to storing flyash in a silo; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: SAJIDA CORPORATION dba Beach Mobil; DOCKET NUMBER: 2009-0732-PST-E; IDENTIFIER: RN100535863; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE

VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.246(5) and (6) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request; PENALTY: \$4,771; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: SUPERIOR GROCERS, INC.; DOCKET NUMBER: 2008-0947-PST-E; IDENTIFIER: RN101549715; LOCATION: Alvarado, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(C) and (5)(B)(ii), by failing to timely renew a UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.49(a)(2) and the Code, §26.3475(d), by failing to maintain the corrosion protection system; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the piping associated with the UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records at least once each month; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §115.222(5) and THSC, §382.085(b), by failing to ensure that each UST vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch; PENALTY: \$20,148; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Thomas Redi-Mix Company, Inc.; DOCKET NUMBER: 2009-0767-IWD-E; IDENTIFIER: RN105495535; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: ready-mixed concrete; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG110669, Part III Permit Requirements, Section A., and the Code, §26.121(a), by failing to comply with permit effluent limits for TSS and pH; and 30 TAC §305.125(17) and TPDES General Permit Number TXG110669, Part IV Standard Permit Conditions 7.(f), by failing to submit effluent monitoring results at intervals specified in the permit; PENALTY: \$6,174; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: Transcontinental Realty Investors, Inc.; DOCKET NUMBER: 2009-0016-MSW-E; IDENTIFIER: RN104795349; LOCATION: Farmers Branch, Dallas County; TYPE OF FACILITY: commercial and residential development site; RULE VIOLATED: 30 TAC §330.954(e)(1), by failing to obtain prior authorization of the Executive Director before interrupting, disturbing, or altering the final cover of a closed landfill; 30 TAC §330.955(g), by failing to properly backfill the excavated areas; 30 TAC §330.955(c), by failing to ensure that the

excavated municipal solid waste (MSW) was removed to an authorized facility; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$35,700; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Upper Leon River Municipal Water District; DOCKET NUMBER: 2009-1148-PWS-E; IDENTIFIER: RN101189264; LOCATION: Comanche County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power that will deliver water at a rate of 0.35 gallons per minute per connection in the event of the loss of normal power supply; PENALTY: \$267; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: Weatherford U.S., L.P.; DOCKET NUMBER: 2009-0865-IWD-E; IDENTIFIER: RN102586088; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004760000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for TSS; PENALTY: \$20,615; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: City of Wichita Falls; DOCKET NUMBER: 2009-1154-WQ-E; IDENTIFIER: RN101611051; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: \$890; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-200904217
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 22, 2009



Notice of Correction to Default Order Number 1

In the May 22, 2009, issue of the *Texas Register* (34 TexReg 3315), the Texas Commission on Environmental Quality (commission) published a notice of Default Order Number, specifically Item Number 1. The reference to Allen Watts was submitted in error by the commission as Allan Watts and instead should have been submitted as Allen Watts.

For questions concerning this error, please contact Rudy Calderon at (512) 239-0205.

TRD-200904224
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 22, 2009



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 2, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 2, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Elegant Craftworks, Inc. dba Allan Products; DOCKET NUMBER: 2007-1480-AIR-E; TCEQ ID NUMBER: RN100215342; LOCATION: 825 Shepherd Drive, Garland, Dallas County; TYPE OF FACILITY: custom cabinetry wood product manufacturing plant; RULES VIOLATED: 30 TAC §122.146(1) and (2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the required annual compliance certifications for the periods of April 1, 2005 - March 31, 2006 and April 1, 2006 - March 31, 2007; PENALTY: \$5,250; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Kabani Corporation dba Agha Convenience Store; DOCKET NUMBER: 2008-1175-PST-E; TCEQ ID NUMBER: RN101569408; LOCATION: 204 Grapevine Highway, Hurst, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3475(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(1)(A), (2) and (A)(i)(III), and TWC, §26.3475(a) and (c)(1), by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), by failing to provide proper release detection for the pressurized piping associated with the USTs, and by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §115.246(7)(A) and THSC, §382.085(b),

by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §115.242(1)(C) and (3)(A), and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems, and by failing to maintain the Stage II equipment in proper operating condition, as specified by the manufacturer and/or any California Air Resources Board Executive Order and free of defects that would impair the effectiveness of the system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$10,662; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC 175, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 2008-1863-PWS-E; TCEQ ID NUMBER: RN101252765; LOCATION: Parrie Haynes Youth Ranch one mile north of the intersection of Gann Branch Road and Maxdale Road, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2), (3)(D)(ii), (E)(i), and (B)(iii), by failing to provide water system records for review at the time of the investigation; 30 TAC §290.43(e), by failing to provide all potable water storage tanks and pressure maintenance facilities in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for the water system's well; 30 TAC §290.41(c)(3)(A), by failing to obtain approval by the executive director prior to using a well as a public water supply source; PENALTY: \$1,050; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200904225

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 22, 2009



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 2, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regula-

tory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 2, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Aamson Enterprises Inc dba Cullen Food Mart; DOCKET NUMBER: 2008-1815-PST-E; TCEQ ID NUMBER: RN101735496; LOCATION: 6643 Cullen Boulevard, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.244(1) and (3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one Station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system and that each current employee received in-house Stage II training regarding the purpose and operation of the vapor recovery system; 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain Stage II records at the Station and make them immediately available for review upon request by a TCEQ representative; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.242(1)(C) and (3) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to Onboard Refueling Vapor Recovery compatible systems and by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and applicable California Air Resource Board Executive Order, and free of defects that would impair the effectiveness of the system including, but not limited to, absence or disconnection of any component that is part of the approved system; PENALTY: \$12,305; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Andre C. Cormier; DOCKET NUMBER: 2009-0270-LII-E; TCEQ ID NUMBER: RN103507133; LOCATION: 5305 Murieta Way, Keller, Tarrant County; TYPE OF FACILITY: landscape business; RULES VIOLATED: 30 TAC §344.70, by failing to comply with local requirements, ordinances, and regulations designed to protect the public water supply; PENALTY: \$341; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Connie Rogers dba Alamo Pumping Blu Site; DOCKET NUMBER: 2009-0673-SLG-E; TCEQ ID NUMBER: RN103160156; LOCATION: approximately three miles south-southwest of San Juan, and approximately 1/3 mile east of the intersection of South Stewart Road and East Balli Road, Hidalgo County; TYPE OF FACILITY: beneficial land use site; RULES VIOLATED: 30 TAC §312.4(d), by failing to obtain authorization for the land application of sewage sludge; and 30 TAC §312.9 and TWC, §5.702, by failing to pay outstanding fees and associated late fees; PENALTY: \$2,000; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC

175, (512) 239-1297; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: John R. Brickle, Jr.; DOCKET NUMBER: 2007-0874-MLM-E; TCEQ ID NUMBER: RN105093355; LOCATION: 269 Valley Meadows Drive, Springtown, Parker County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the prohibition on outdoor burning; and 30 TAC §330.15(c), by failing to dispose of municipal solid waste at an authorized facility; PENALTY: \$2,100; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: KM Aviation, Inc.; DOCKET NUMBER: 2008-0076-AIR-E; TCEQ ID NUMBER: RN104372990; LOCATION: 5110 Voyager Drive, Dallas, Dallas County; TYPE OF FACILITY: aerospace surface coating plant; RULES VIOLATED: THSC, §382.085(b) and §382.0518(a) and 30 TAC §116.110(a) and TCEQ Agreed Order Docket Number 2005-0542-AIR-E, by failing to comply with Ordering Provisions Numbers 2.a. - 2.d. of TCEQ Agreed Order Docket Number 2005-0542-AIR-E by failing authorization for an aircraft spraying booth; PENALTY: \$30,000; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Sendero Exteriors, Inc.; DOCKET NUMBER: 2008-0212-WQ-E; TCEQ ID NUMBER: RN105233530; LOCATION: 3332 and 3336 Camden Lane, Flower Mound, Denton County; TYPE OF FACILITY: concrete finishing business; RULES VIOLATED: TWC, §26.121, by failing to prevent the unauthorized discharge of industrial waste into or adjacent to waters in the state; PENALTY: \$8,736; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200904226
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 22, 2009



Notice of Request for Nominations to Fill Positions on the Pollution Prevention Advisory Committee

The Texas Commission on Environmental Quality (commission) is soliciting nominations to fill several positions on the Pollution Prevention Advisory Committee (PPAC). The legislatively created advisory committee, established under Texas Health and Safety Code, §361.0215, advises the commission on the state's policy and goals for pollution prevention and waste minimization.

The PPAC is composed of nine voting members who offer a balanced representation of environmental and public interest groups and the regulated community.

Individuals interested in being considered by the commission should submit a one-page letter of interest and brief resume or biography. All materials must be received by the commission no later than 5:00 p.m. October 23, 2009.

The PPAC advises the commission on: the appropriate organization of state agencies and the financial and technical resources required to aid

the state in its efforts to promote waste reduction and minimization; the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households; the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Texas Health and Safety Code, §361.023(a); and the development of state purchasing guidelines for environmentally preferable products, under the authority provided in Texas Health and Safety Code, §361.423.

The PPAC operates under the requirements of 30 TAC Chapter 5, Advisory Committees and Groups. The 79th Legislature, 2005, authorized reimbursement for committee members' travel expenses.

The commissioners invite nominations for the following positions. Nominations may be made for oneself. Each nomination should include a brief cover letter and biographical summary that includes the individual's experience and qualifications, and an agreement to serve on the committee if appointed. Please submit nomination(s) for consideration by the commission for the following terms: two full member representatives from the regulated community (to fill four-year terms that expire on August 31, 2013); three full member representatives from an environmental or public interest group (to fill four-year terms that expire on August 31, 2013). If you submitted a nomination for the previous posting, you do not need to resubmit.

Written nominations must be received in the Small Business and Environmental Assistance Division Office by 5:00 p.m. on October 23, 2009, via mail, hand delivery, email, or fax. Nominations should be directed to: Mary Kelley, Small Business and Environmental Assistance Division (MC 113), Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. They can also be sent via e-mail to recycle@tceq.state.tx.us, or they can be faxed to (512) 239-1065. Documents can be submitted via hand delivery to the Small Business and Environmental Assistance Division, 12100 Park 35 Circle, Building F, Suite 1301, Austin, Texas 78753.

Questions regarding the PPAC and the current nominations process can be directed to Mary Kelley at (512) 239-6324.

TRD-200904228
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 22, 2009



Texas Facilities Commission

Request for Offers #303-0-10322

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety (DPS), announces the issuance of a Request for Offers (RFO) #303-0-10322 to solicit Offers to sell or donate qualified parcels of land to DPS, located within the city limits of the City of Rio Grande City or within a 10 mile radius of the Rio Grande City limits and within the border of the State of Texas. The site should contain a minimum of 5 acres of land or 217,800 square feet of contiguous land, which is the preferred size. However, sites greater than 5 acres will be considered.

The deadline for questions is October 9, 2009 and the deadline for offers is October 23, 2009 at 3:00 p.m. The award date is to be determined. TFC reserves the right to accept or reject any or all offers submitted. TFC is under no legal or other obligation to issue an award on

the basis of this notice or the distribution of an RFO. Neither this notice nor the RFO commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting an offer may obtain information by contacting Myra Beer at (512) 463-5773 or Myra.Beer@tfc.state.tx.us. A copy of the RFO may be downloaded from the Electronic State Business Daily at: http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85177.

TRD-200904245

Kay Molina

General Counsel

Texas Facilities Commission

Filed: September 23, 2009



Texas Health and Human Services Commission

Notice of Adopted Medicaid Provider Payment Rates

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted new per diem payment rates for the nursing facility program operated by the Texas Department of Aging and Disability Services (DADS). These payment rates were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification." The proposed rates and public hearing notice were published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4764).

The adopted payment rates, which were effective September 1, 2009, are as follows:

Base Rates by RUG (Resource Utilization Group) class:

RUG	RUG Base Rate
RAD (Rehabilitation D)	\$188.06
RAC (Rehabilitation C)	\$166.11
RAB (Rehabilitation B)	\$156.01
RAA (Rehabilitation A)	\$137.20
SE3 (Extensive Services 3)	\$224.60
SE2 (Extensive Services 2)	\$190.69
SE1 (Extensive Services 1)	\$165.58
SSC (Special Care C)	\$161.71
SSB (Special Care B)	\$152.88
SSA (Special Care A)	\$152.54
CC2 (Clinically Complex C2)	\$132.09
CC1 (Clinically Complex C1)	\$125.12
CB2 (Clinically Complex B2)	\$121.17
CB1 (Clinically Complex B1)	\$115.70
CA2 (Clinically Complex A2)	\$109.84
CA1 (Clinically Complex A1)	\$103.26
IB2 (Impaired Cognition B2)	\$110.01
IB1 (Impaired Cognition B1)	\$102.56
IA2 (Impaired Cognition A2)	\$93.66
IA1 (Impaired Cognition A1)	\$88.83
BB2 (Behavior Problems B2)	\$108.02
BB1 (Behavior Problems B1)	\$97.76
BA2 (Behavior Problems A2)	\$91.90
BA1 (Behavior Problems A1)	\$83.16
PE2 (Reduced Physical Function E2)	\$116.32
PE1 (Reduced Physical Function E1)	\$109.97
PD2 (Reduced Physical Function D2)	\$111.52
PD1 (Reduced Physical Function D1)	\$104.94
PC2 (Reduced Physical Function C2)	\$102.16
PC1 (Reduced Physical Function C1)	\$97.96
PB2 (Reduced Physical Function B2)	\$95.37
PB1 (Reduced Physical Function B1)	\$90.75
PA2 (Reduced Physical Function A2)	\$85.10
PA1 (Reduced Physical Function A1)	\$80.29
Default when Minimum Data Set assessment data are incomplete	\$80.29
Default when a Minimum Data Set assessment is missing.	\$80.29
Supplemental Payments:	
Ventilator - Continuous	\$125.09
Ventilator - Less than Continuous	\$50.04
Pediatric Tracheostomy	\$75.05

Facilities participating in the Enhanced Direct Care Staff Rate will receive one of the following payment rates per day in addition to the above payment rates based upon their level of enrollment in the Enhanced Direct Care Staff Rate. Enrollment levels are indicated by the number of Licensed Vocational Nurse (LVN) equivalent minutes a facility is required to provide to avoid recoupment of enhanced funds.

LVN-equivalent minutes can be provided by Registered Nurses (RNs), LVNs, Medication Aides and/or Certified Nurse Aides.

Add-on Rates by Enhancement Level:

Minutes Associated with Adopted Rate	Adopted Rate Per Diem
1 LVN Minute = 2.05 Aide Minutes = 0.68 RN Minutes	\$0.39
2 LVN Minutes = 4.11 Aide Minutes = 1.37 RN Minutes	\$0.78
3 LVN Minutes = 6.16 Aide Minutes = 2.05 RN Minutes	\$1.17
4 LVN Minutes = 8.21 Aide Minutes = 2.74 RN Minutes	\$1.56
5 LVN Minutes = 10.26 Aide Minutes = 3.42 RN Minutes	\$1.95
6 LVN Minutes = 12.32 Aide Minutes = 4.11 RN Minutes	\$2.34
7 LVN Minutes = 14.37 Aide Minutes = 4.79 RN Minutes	\$2.73
8 LVN Minutes = 16.42 Aide Minutes = 5.47 RN Minutes	\$3.12
9 LVN Minutes = 18.47 Aide Minutes = 6.16 RN Minutes	\$3.51
10 LVN Minutes = 20.53 Aide Minutes = 6.84 RN Minutes	\$3.90
11 LVN Minutes = 22.58 Aide Minutes = 7.53 RN Minutes	\$4.29
12 LVN Minutes = 24.63 Aide Minutes = 8.21 RN Minutes	\$4.68
13 LVN Minutes = 26.68 Aide Minutes = 8.89 RN Minutes	\$5.07
14 LVN Minutes = 28.74 Aide Minutes = 9.58 RN Minutes	\$5.46
15 LVN Minutes = 30.79 Aide Minutes = 10.26 RN Minutes	\$5.85
16 LVN Minutes = 32.84 Aide Minutes = 10.95 RN Minutes	\$6.24
17 LVN Minutes = 34.89 Aide Minutes = 11.63 RN Minutes	\$6.63
18 LVN Minutes = 36.95 Aide Minutes = 12.32 RN Minutes	\$7.02
19 LVN Minutes = 39.00 Aide Minutes = 13.00 RN Minutes	\$7.41
20 LVN Minutes = 41.05 Aide Minutes = 13.68 RN Minutes	\$7.80
21 LVN Minutes = 43.10 Aide Minutes = 14.37 RN Minutes	\$8.19
22 LVN Minutes = 45.16 Aide Minutes = 15.05 RN Minutes	\$8.58
23 LVN Minutes = 47.21 Aide Minutes = 15.74 RN Minutes	\$8.97
24 LVN Minutes = 49.26 Aide Minutes = 16.42 RN Minutes	\$9.36
25 LVN Minutes = 51.32 Aide Minutes = 17.11 RN Minutes	\$9.75
26 LVN Minutes = 53.37 Aide Minutes = 17.79 RN Minutes	\$10.14
27 LVN Minutes = 55.42 Aide Minutes = 18.47 RN Minutes	\$10.53

Facilities that verify liability insurance coverage acceptable to HHSC will receive one of the following payment rates per day in addition to the above payment rates based upon the type of liability insurance coverage they maintain:

Type of Liability Insurance	Adopted Rate Per Diem
General and Professional	\$1.63
Professional Only	\$1.49
General Only	\$0.13

Methodology and Justification. The adopted rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology and §355.308, Direct Care Staff Rate Component; and §355.312, Reimbursement Setting Methodology - Liability Insurance Costs. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). These changes are being made in accordance with the 2010-11 General Appropriations Act (Article II, S.B. 1, 81st Legislature, Regular Session, 2009), which appropriated \$55.6 million in general revenue funds for State Fiscal Year 2010 for provider rate increases for the DADS Nursing Facility Program.

TRD-200904230

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: September 22, 2009



Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 20, 2009, at 9:00 a.m. to receive public comment on proposed rates for Hospice routine home, continuous home, inpatient respite, and general inpatient care. The Medicaid Hospice program is operated by the Texas Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at

11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Meisha Scott by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Briefing Package. A briefing package describing the proposed payment rates will be available on October 5, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Meisha Scott by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Meisha.Scott@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Meisha Scott, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Meisha Scott at (512) 491-1998; or by e-mail to Meisha.Scott@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Meisha Scott, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200904207

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: September 21, 2009



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Bioo Scientific Corporation	L06248	Austin	00	09/11/09
El Paso	El Paso Animal Emergency Center	L06263	El Paso	00	09/11/09
Throughout TX	Cummings Wireline Services L.L.C.	L06268	Cibolo	00	09/09/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Alice	Usman Qureshi, M.D. dba Alice Heart Center	L05366	Alice	04	09/01/09
Amarillo	Baptist St. Anthony's Health System	L01259	Amarillo	89	09/08/09
Anderson	National Oilwell Varco L.P.	L06094	Anderson	02	09/02/09
Arlington	Dallas Cardiology Associates P.A. dba Heart Place of Arlington	L05855	Arlington	06	09/02/09
Austin	Seton Healthcare dba Dell Children's Medical Center of Central Texas	L06065	Austin	13	09/03/09
Austin	Oncology P.A.	L05108	Austin	22	09/01/09
Austin	Live Oak Cardiology P.A.	L06198	Austin	02	09/09/09
Bay City	Matagorda County Hospital District	L02701	Bay City	15	09/11/09
Bay City	Bay City Cardiology Clinic	L05975	Bay City	04	09/11/09
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary L.P. dba Bedford Imaging Center	L03455	Bedford	50	09/02/09
Corpus Christi	Citgo Refining and Chemicals Company L.P.	L00243	Corpus Christi	45	09/02/09
Dallas	Methodist Hospital of Dallas Radiology Services	L00659	Dallas	68	09/04/09
Deer Park	Oxy Vinyls L.P.	L03200	Deer Park	15	09/02/09
Denton	Mayhill Cancer Center L.L.C.	L06093	Denton	04	09/09/09
El Paso	Cardiology Care Consultants	L05045	El Paso	08	09/02/09
El Paso	Cardiology Care Consultants	L05045	El Paso	09	09/03/09
Fort Worth	Oncology Hematology Consultants P.A. dba The Center for Cancer and Blood Disorders	L05919	Fort Worth	10	09/09/09
Houston	Hotwell U.S. LTD.	L06145	Houston	06	08/25/09
Houston	Memorial Hermann Hospital System dba Memorial Hospital - Memorial City	L01168	Houston	109	08/28/09
Houston	Texas Children's Hospital	L04612	Houston	46	08/28/09
Houston	CHCA West Houston L.P. dba West Houston Medical Center	L06055	Houston	09	09/02/09
Houston	Medi Physics Inc. dba G. E. Healthcare	L05517	Houston	19	09/04/09
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	05	09/04/09
Houston	Memorial Hermann Hospital System dba Memorial Hospital - Southwest	L00439	Houston	144	09/02/09
Houston	Memorial Hermann Hospital System dba Memorial Hospital - Southwest	L00439	Houston	145	09/08/09
Kyle	Seton Healthcare dba Seton Medical Center - Hays	L06254	Kyle	01	08/31/09

AMENDMENTS TO EXISTING LICENSES ISSUED: (CONTINUED)

Location	Name	License #	City	Amend- ment #	Date of Action
Lubbock	Covenant Medical Group dba Cardiology Associates Covenant Medical Group	L04468	Lubbock	23	08/31/09
North Richland Hills	Columbia North Hills Hospital Subsidiary L.P.	L02271	North Richland Hills	61	09/08/09
Pasadena	Celanese LTD. - Clear Lake Plant	L01130	Pasadena	73	09/02/09
San Antonio	Petnet Solutions, Inc.	L05569	San Antonio	21	09/01/09
San Antonio	Methodist Healthcare System of San Antonio LTD. L.L.P.	L00594	San Antonio	261	09/08/09
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	109	09/02/09
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	33	08/31/09
Stafford	Aloki Enterprise, Inc.	L06257	Stafford	01	09/11/09
Stephenville	Texas Health Harris Methodist Hospital - Stephenville	L03097	Stephenville	33	09/04/09
Stephenville	Stephenville Medical and Surgical Clinic	L05309	Stephenville	17	09/11/09
Texarkana	Collom & Carney Clinic Association	L05524	Texarkana	05	09/01/09
Throughout TX	Eagle NDT L.L.C.	L06176	Abilene	10	09/08/09
Throughout TX	Lower Consulting, Inc.	L06042	Abilene	02	09/10/09
Throughout TX	Lower Colorado River Authority	L02738	Austin	44	09/11/09
Throughout TX	Wilson Inspection X-ray Services, Inc.	L04469	Corpus Christi	62	09/09/09
Throughout TX	JRJ Paving, Inc.	L05307	Dallas	09	09/09/09
Throughout TX	Terracon Consultants, Inc.	L05268	Dallas	31	09/14/09
Throughout TX	Professional Services Industries, Inc.	L04940	Dallas	11	09/10/09
Throughout TX	IRISNDT, Inc.	L04769	Deer Park	78	09/01/09
Throughout TX	Savage-Tolk Corporation	L02672	Earth	23	09/10/09
Throughout TX	Raba-Kistner Consultants (SW), Inc.	L02337	El Paso	25	09/02/09
Throughout TX	Mandes Inspection and Testing Services, Inc.	L05220	Houston	66	08/31/09
Throughout TX	Thrubit L.L.C.	L06030	Houston	09	09/01/09
Throughout TX	A & R Engineering and Testing, Inc.	L05318	Houston	07	09/01/09
Throughout TX	Goolsby Testing Laboratories, Inc.	L03115	Humble	96	09/10/09
Throughout TX	Hi-Tech Testing Services, Inc.	L05021	Longview	78	09/04/09
Throughout TX	Hi-Tech Testing Services, Inc.	L05021	Longview	79	09/11/09
Throughout TX	Landtec Engineers L.L.C.	L05341	Mansfield	05	09/02/09
Throughout TX	Spectro Analytical Instruments, Inc.	L02788	Marble Falls	49	09/03/09
Throughout TX	E & P Wireline Services L.L.C.	L05738	Midland	17	08/28/09
Throughout TX	American X-ray & Inspection Services, Inc.	L05974	Midland	21	09/14/09
Throughout TX	Techcorr USA L.L.C.	L05972	Palestine	67	09/01/09
Throughout TX	Fugro Consultants, Inc.	L04322	Pasadena	101	09/10/09
Throughout TX	Conam Inspection & Engineering, Inc.	L05010	Pasadena	170	09/03/09
Throughout TX	IHI Southwest Technologies, Inc.	L05278	San Antonio	13	09/04/09
Throughout TX	Advanced Inspections Technologies	L06228	Spring	02	09/08/09
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	114	09/03/09
Throughout TX	TSI Laboratories, Inc.	L04767	Victoria	12	09/01/09
Tomball	Northwest Houston Heart Center	L05958	Tomball	05	09/04/09
Tyler	Trinity Mother Frances	L01670	Tyler	147	09/11/09
Vernon	Walbarger General Hospital	L03047	Vernon	20	09/04/09
Victoria	Crossroads Health Center P.L.L.C.	L06130	Victoria	03	09/04/09
Victoria	Citizens Medical Center	L00283	Victoria	80	09/11/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Port Lavaca	Seadrift Coke L.P.	L03432	Port Lavaca	25	09/01/09

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Maxum Health Services Corporation dba Insight Diagnostic Center	L05904	Dallas	03	09/09/09
Houston	Exxonmobil Upstream Research Company	L00205	Houston	59	09/03/09
Laredo	Laredo Medical Center dba A. R. Sanchez, Sr. and Iris Sanchez - Stewart Cancer Center	L05305	Laredo	08	09/09/09
Richardson	Optex Systems, Inc.	L04332	Richardson	11	09/01/09
Throughout TX	Fugro Consultants L.P.	L01474	Corpus Christi	33	09/08/09
Throughout TX	Garner Environmental Services, Inc.	L05228	Deer Park	05	09/02/09
Webster	Roger C. Willette, M.D. P.A.	L05466	Webster	08	08/31/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-200904153
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: September 18, 2009



Maximum Fees Allowed for Providing Health Care Information Effective October 2, 2009

This notice supersedes the posting issued in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6181).

The Department of State Health Services licenses general and special hospitals in accordance with the Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In 2009, the Texas Legislature amended the law to change the definition of health care information and to add a category of fees for records provided on and delivered in a digital or other electronic media. In addition, requests for payment information are now explicitly subject to Health and Safety Code, §311.002. In accordance with Health and Safety Code, §241.154(e), the fee for providing a patient's health care information has been adjusted by -2.7% to reflect the most recent changes to the consumer price index as published by the Bureau of Labor Statistics of the United States Department of Labor. The Bureau of Labor Statistics measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.

Health and Safety Code, §241.154(b) - (d):

(b) Except as provided by Subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information except payment information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed \$41.39; and

(A) a charge for each page of:

(i) \$1.39 for the 11th through the 60th page of provided copies;

(ii) 69 cents for the 61st through the 400th page of provided copies;

(iii) 36 cents for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies;

(2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$63.06; and

(A) \$1.39 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:

(A) a retrieval or processing fee, which may not exceed \$75.00; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Civil Practice and Remedies Code, §22.004; and

(2) written responses to a written set of questions, not to exceed \$14.01 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under Subsection (b) to the extent the fee is prohibited under Health and Safety Code, Chapter 161, Subchapter M;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payor, except as provided under §311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

This information is provided only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that fees for health care information are charged in accordance with Health and Safety Code, Chapters 241, 311, and 324.

The statutes referenced in this notice may be found on the Internet at:

Health and Safety Code, <http://www.statutes.legis.state.tx.us?link=HS>

Labor Code, <http://www.statutes.legis.state.tx.us?link=LA>

Civil Practice and Remedies Code, <http://www.statutes.legis.state.tx.us?link=CP>

If you have questions, you may contact the Department of State Health Services, Facility Licensing Group, 1100 West 49th Street, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 834-6648.

TRD-200904215

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: September 22, 2009

Houston-Galveston Area Council

Request for Information

The Houston-Galveston Area Council (H-GAC) solicits information from qualified organizations to provide an Interactive Voice Response (IVR) or similar system for Workforce Solutions. H-GAC seeks informative proposals from prospective organizations that can provide this service in a thirteen-county area of southeast Texas which includes the Houston metropolitan area. We encourage anyone with experience with Interactive Voice Response or similar systems to apply.

A proposal package will be available for download at www.h-gac.com or www.wrksolutions.com beginning at 5:00 p.m. Central Standard Time on Wednesday, September 23, 2009. Hard copies of the package will also be available at that time. Proposals are due at H-GAC offices on or before 12:00 noon Central Daylight Time on Monday, October 12, 2009. Mailed proposals must be postmarked no later than Friday, October 9, 2009. H-GAC will not accept late proposals; we will make no exceptions. Prospective organizations may contact Carol Kimmick at (713) 627-3200 or carol.kimmick@h-gac.com or visit the web site to request a proposal package.

TRD-200904233

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: September 22, 2009

Texas Lottery Commission

Instant Game Number 1214 "Ultimate Casino Jackpot"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1214 is "ULTIMATE CASINO JACKPOT". The play style for this game is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1214 shall be \$50.00 per ticket.

1.2 Definitions in Instant Game No. 1214.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, J CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, \$50.00, \$70.00, \$75.00, \$100, \$150, \$250, \$500, \$1,000, \$2,000, \$2,500, \$7.5 MILL, APPLE SYMBOL, ORANGE SYMBOL, MELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, BELL SYMBOL, HORSE-SHOE SYMBOL, CLOVER SYMBOL, GOLD BAR SYMBOL, 7 SYMBOL, WISH BONE SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, CHERRY SYMBOL, 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL, 6 DICE SYMBOL, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1214 - 1.2D

PLAY SYMBOL	CAPTION
A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
\$50.00	FIFTY
\$70.00	SEVENTY
\$75.00	SVY FIV
\$100	ONE HUND
\$150	HUND FTY
\$250	TWO FTY
\$500	FIV HUND
\$1,000	ONE THOU
\$2,000	TWO THOU
\$2,500	25 HUND
\$7.5 MILL	7.5MILL
APPLE SYMBOL	APL
ORANGE SYMBOL	ORG
MELON SYMBOL	MEL
BANANA SYMBOL	BAN
STAR SYMBOL	STA
LEMON SYMBOL	LEM
BELL SYMBOL	BEL
HORSESHOE SYMBOL	SHO
CLOVER SYMBOL	CLO
GOLD BAR SYMBOL	BAR
7 SYMBOL	SVN
WISH BONE SYMBOL	WBN
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
CHERRY SYMBOL	CHY
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THR
4 DICE SYMBOL	FOR
5 DICE SYMBOL	FIV
6 DICE SYMBOL	SIX
4	FOR
5	FIV
6	SIX

7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Mid-Tier Prize - A prize of \$50.00, \$70.00, \$100, \$150, \$250 or \$500.

G. High-Tier Prize - A prize of \$1,000, \$2,000, \$10,000 or \$7,500,000.

H. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

I. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1214), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 020 within each pack. The format will be: 1214-0000001-001.

J. Pack - A pack of "ULTIMATE CASINO JACKPOT" Instant Game tickets contains 020 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket back 001 and 020 will both be exposed.

K. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "ULTIMATE CASINO JACKPOT" Instant Game No. 1214 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A

prize winner in the "ULTIMATE CASINO JACKPOT" Instant Game is determined once the latex on the ticket is scratched off to expose 65 (sixty-five) Play Symbols. In Game 1, the player adds the cards in each HAND. If any of HANDS 1-3 beat the DEALER'S HAND, the player wins the PRIZE shown for that HAND. J, Q, K = 10. ACE = 11. In Game 2, if the player reveals 3 matching symbols within a ROW, the player wins the PRIZE shown for that ROW. In Game 3, the player adds the dice in each ROLL. If the total of the ROLL equals 7 or 11, the player wins PRIZE shown for that ROLL. In Game 4, if the player reveals 3 matching prize amounts, the player wins that amount. In Game 5, if a player matches any of YOUR NUMBERS to the WHEEL NUMBER within the same WHEEL, the player wins PRIZE shown for that NUMBER. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 65 (sixty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 65 (sixty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 65 (sixty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 65 (sixty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.
- B. The top prize will appear on every ticket unless otherwise restricted.
- C. GAME 1: No duplicate non-winning prize symbols in this game.
- D. GAME 1: No duplicate non-winning HANDS in any order.
- E. GAME 1: No HAND will contain two aces.
- F. GAME 1: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

G. GAME 1: There will be no ties between the DEALER'S HAND and any HAND 1-3.

H. GAME 1: The DEALER'S HAND will never total 21.

I. GAME 1: The DEALER'S HAND will always total at least 12 but no more than 20.

J. GAME 1: No HAND will total less than 14.

K. GAME 2: No duplicate non-winning prize symbols in this game.

L. GAME 2: No duplicate non-winning ROWS in any order.

M. GAME 2: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

N. GAME 2: There will be many near wins, defined as two matching play symbols within a ROW.

O. GAME 3: No duplicate non-winning prize symbols in this game.

P. GAME 3: No duplicate non-winning ROLLS in any order.

Q. GAME 3: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

R. GAME 4: No three pairs of matching play symbols.

S. GAME 4: No more than 3 matching play symbols.

T. GAME 4: Game may only win once.

U. GAME 5: No duplicate non-winning YOUR NUMBERS.

V. GAME 5: No duplicate WHEEL NUMBERS.

W. GAME 5: No three or more matching non-winning prize symbols between the 3 roulette wheels.

X. GAME 5: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

Y. GAME 5: No YOUR NUMBER play symbol will match a WHEEL NUMBER play symbol located in another WHEEL.

Z. GAME 5: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).

2.3 Procedure for Claiming Prizes.

A. To claim a "ULTIMATE CASINO JACKPOT" Instant Game prize of \$50.00, \$70.00, \$100, \$150, \$250, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$70.00, \$100, \$150, \$250 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ULTIMATE CASINO JACKPOT" Instant Game prize of \$1,000, \$2,000 or \$10,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery

shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "ULTIMATE CASINO JACKPOT" top level prize of \$7,500,000, claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "ULTIMATE CASINO JACKPOT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "ULTIMATE CASINO JACKPOT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "ULTIMATE CASINO JACKPOT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,600,000 tickets in the Instant Game No. 1214. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1214 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$50	540,000	6.67
\$70	630,000	5.71
\$100	207,750	17.33
\$150	50,040	71.94
\$250	14,250	252.63
\$500	13,500	266.67
\$1,000	4,200	857.14
\$2,000	1,500	2,400,000
\$10,000	100	36,000.00
\$7,500,000	3	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.46. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1214 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1214, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904242

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: September 23, 2009



Instant Game Number 1219 "Platinum 8's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1219 is "PLATINUM 8'S". The play style is "key number match with auto win and instant \$50".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1219 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1219.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, MONEY BAG SYMBOL, 8 SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1219 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
9	NIN
10	TEN
11	ELV
12	TLV
13	THN
14	FRN
15	FTN
16	SXT
17	SVT
19	NIT
20	TWY
21	TTO
22	TTW
23	TTR
24	TTF
25	TYF
26	TTS
27	TYS
29	TTN
30	TRY
31	TRO
32	TRT
33	TYT
34	TRF
35	TFV
36	TRS
37	TRV
39	TRN
40	FRY
MONEY BAG SYMBOL	WIN\$50
8 SYMBOL	EGT
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND

\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1219), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1219-0000001-001.

K. Pack - A pack of "PLATINUM 8'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PLATINUM 8'S" Instant Game No. 1219 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "PLATINUM 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS to any of the WINNING NUMBERS, the player wins the PRIZE shown for that number. If a player reveals an "8" play symbol, the player wins the PRIZE shown for that number instantly. If a player reveals a "MONEY BAG" play symbol, the player wins \$50 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "8" (auto win) play symbol will never appear more than once on a ticket.

C. The "MONEYBAG" (win \$50) play symbol will always appear with the \$50 prize symbol.

D. No more than three (3) matching non-winning prize symbols will appear on a ticket.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

I. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "PLATINUM 8'S" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PLATINUM 8'S" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PLATINUM 8'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly

complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "PLATINUM 8'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "PLATINUM 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players

Figure 2: GAME NO. 1219 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	566,400	12.50
\$10	755,200	9.38
\$15	212,400	33.33
\$20	188,800	37.50
\$50	94,400	75.00
\$100	9,086	779.22
\$500	944	7,500.00
\$1,000	177	40,000.00
\$5,000	20	354,000.00
\$50,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1219 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1219, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904243

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: September 23, 2009



Instant Game Number 1264 "Find the 9's"

1.0 Name and Style of Game.

whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1219. The approximate number and value of prizes in the game are as follows:

A. The name of Instant Game No. 1264 is "FIND THE 9'S". The play style is "match 3 of 6 with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1264 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1264.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$3.00, \$5.00, \$30.00, \$50.00, \$300 and 9.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1264 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$30.00	THIRTY
\$50.00	FIFTY
\$300	THR HUND
9	NINE

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$5.00, \$9.00 or \$19.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$90.00 or \$300.

H. High-Tier Prize - A prize of \$999.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1264), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1264-0000001-001.

K. Pack - A pack of "FIND THE 9'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 146 to 150 will be on the last page with backs exposed. Tickets 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIND THE 9'S" Instant Game No. 1264 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FIND THE 9'S" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals 3 matching amounts in the play area, the player wins that amount. If a player reveals any "9" play symbols in the play area, the player wins corresponding prize in the prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain two sets of three matching prize amounts.

C. No ticket will contain 4 or more matching prize amounts.

D. No ticket will contain more than four "9" play symbols.

E. No ticket will contain one or more "9" symbols and three matching prize symbols.

F. The "9" play symbol will only appear on intended winning tickets as dictated by the prize structure.

G. Tickets can only win once (and will win only the highest amount shown).

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 9'S" Instant Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$9.00, \$19.00, \$30.00, \$50.00, \$90.00 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$90.00 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIND THE 9'S" Instant Game prize of \$999, the claimant must sign the winning ticket and present it at one of the Texas

Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIND THE 9'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature

Figure 2: GAME NO. 1264 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	2,520,000	8.00
\$2	940,800	21.43
\$3	403,200	50.00
\$5	235,200	85.71
\$9	168,000	120.00
\$19	67,200	300.00
\$30	21,000	960.00
\$50	12,600	1,600.00
\$90	10,668	1,889.76
\$300	420	48,000.00
\$999	168	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.60. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1264 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1264, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904244

appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 1264. The approximate number and value of prizes in the game are as follows:

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 23, 2009

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 14, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37459 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37459.

TRD-200904174

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 21, 2009



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 17, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Television, Inc. for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37468 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37468.

TRD-200904221

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 22, 2009



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 18, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37481 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37481.

TRD-200904223

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 22, 2009



Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 14, 2009, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Centrovision, Inc. for a State-Issued Certificate of Franchise Authority, Project Number 37458 before the Public Utility Commission of Texas.

The requested CFA service area includes the city limits of Morgan's Point Resort, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37458.

TRD-200904173

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 21, 2009



Notice of Application for a Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 11, 2009, for certificate of convenience and necessity authority pursuant to House Bill 3309 (HB 3309).

Docket Style and Number: Application of Electric Transmission Texas, LLC for Certificate of Convenience and Necessity Authority Pursuant to House Bill 3309. Docket Number 37457.

The Application: Electric Transmission Texas, LLC (ETT) stated it is filing this application to alleviate uncertainty created by the Travis County District Court's reversal of the commission's December 2007 grant of a transmission-only certificate of convenience and necessity to the company in Docket Number 33734. According to ETT, following issuance of the District Court judgment, the Legislature enacted HB 3309, identifying certain requirements for an entity seeking a CCN to provide transmission service in the Electric Reliability Council of Texas (ERCOT). ETT stated it meets the requirements of HB 3309, and requests the commission issue it a CCN under that legislation to confirm the company's authority to operate as a transmission utility in ERCOT. ETT, Texas Industrial Energy Consumers, and the State of Texas have entered into a stipulation concerning this application. Representative of the Cities of Harlingen, et al. have participated in the stipulation and do not oppose the stipulation. The commission has jurisdiction over this application under Public Utility Regulatory Act §37.051, as amended by HB 3309.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is 45 days after filing. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37457.

TRD-200904172

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 21, 2009



Notice of Application for Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 15, 2009, for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless and d/b/a Right Wireless for Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 37462.

The Application: The company is requesting ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to P.U.C. Substantive Rule §26.417, the commission, either upon its own motion or upon request, designates qualifying common carriers as ETPs for service areas set forth by the commission. Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless and d/b/a Right Wireless seeks ETP designation in the wire centers shown in Attachment D of the application, and for which it was previously designated as an ETC.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas (commission) by October 22, 2009. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 37462.

TRD-200904176

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 21, 2009



Notice of Application to Amend a Certificate of Convenience and Necessity for Proposed CREZ Priority Transmission Lines

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 16, 2009, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zones (CREZ) priority transmission line in Scurry, Mitchell, Fisher, Nolan and Taylor Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for the Tonkawa - Sweetwater East - Central Bluff 345-kV CREZ Transmission Line in Scurry, Mitchell, Fisher, Nolan and Taylor Counties. SOAH Docket Number 473-10-0399; PUC Docket Number 37407.

The Application: Oncor Electric Delivery Company LLC (Oncor) requests to amend its CCN for a proposed CREZ priority transmission line designated the Tonkawa - Sweetwater East - Central Bluff 345-kV Transmission Line Project (Project). The proposed Project consists of constructing two new double-circuit 345-kV transmission lines. The first of these lines extends from Oncor's existing Tonkawa Switching Station, located west/northwest of Sweetwater, to the Sweetwater East Switching Station, located east of Sweetwater. The second of these lines extends from Oncor's proposed Sweetwater East Switching Station to Oncor's proposed Central Bluff Switching Station, located south/southeast of Sweetwater. Combined, the two new 345-kV double-circuit lines are approximately 66 miles in length. Given that both circuits of each line will be installed initially, certification of both circuits is being sought in this application. The estimated cost of the Project is \$133,337,000.

In 2008 the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket Number 33672, Order on Rehearing (October 7, 2008). The Tonkawa - Sweetwater and Sweetwater - Central Bluff 345-kV transmission line projects, the subject of this application, were specifically identified in that order as necessary facilities. In Docket Number 36801, Oncor was ordered to complete the project identified as Tonkawa - Sweetwater - Central Bluff CREZ Priority Project in a single application. *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones*, Docket Number 36801 (July 8, 2009). The estimated date to energize facilities for the Tonkawa to Sweetwater East line is May 2011. The estimated date to energize facilities for the Sweetwater East to Central Bluff line is December 2011. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-0399 and PUC Docket Number 37407.

TRD-200904218

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 22, 2009



Notice of Application to Amend a Certificate of Convenience and Necessity for Proposed CREZ Priority Transmission Lines

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 16, 2009, to amend a certificate of convenience and necessity for a proposed

Competitive Renewable Energy Zones (CREZ) priority transmission line in Archer, Wichita, and Wilbarger Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for the Riley - Bowman 345-kV CREZ Transmission Line (formerly Oklaunion - Bowman Line) within Archer, Wichita, and Wilbarger Counties. SOAH Docket Number 473-10-0398; PUC Docket Number 37408.

The Application: The application of Oncor Electric Delivery Company LLC (Oncor) for a proposed CREZ priority transmission line is designated the Riley - Bowman 345-kV CREZ Transmission Line Project (Project). The proposed Project consists of constructing a new 345-kV double-circuit transmission line that extends from the new Electric Transmission Texas, LLC (ETT) Riley Station, located in the southeastern portion of Wilbarger County, through southwestern Wichita County to the existing Oncor Bowman Switching Station, located in northern Archer County. The Electric Reliability Council of Texas (ERCOT) Transmission Optimization Study identified this Project for termination at American Electric Power's (AEP) Oklaunion Generating Station. Subsequently, AEP indicated that the Oklaunion Generating Station facility was not designed to serve as a mid-point hub for wind energy transport paths and consequently presents station access and expansion limitations and identified the Riley Station, located to the east of the Oklaunion Station, as an alternative. AEP has delegated the construction of the Riley Station to ETT. ERCOT has concurred with this alternative. The estimated cost of the Project is \$49,350,000. In 2008 the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket Number 33672, Order on Rehearing (October 7, 2008). The Project was specifically identified in that order as necessary facilities. In Docket Number 36801, Oncor was ordered to complete the Project described in this application. *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones*, Docket Number 36801, (July 8, 2009). The estimated date to energize facilities for the Riley - Bowman 345-kV transmission line is December 2011. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-0398 and PUC Docket Number 37408.

TRD-200904219
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 22, 2009

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Notice of Application to Amend a Certificate of Convenience and Necessity for Proposed CREZ Priority Transmission Lines

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 16, 2009, to amend a certificate of convenience and necessity for a proposed

Competitive Renewable Energy Zones (CREZ) priority transmission line in Scurry and Mitchell Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for the Central B - Central A - Tonkawa 345-kV CREZ Transmission Line in Scurry and Mitchell Counties. SOAH Docket Number 473-10-0400; PUC Docket Number 37409.

The Application: The application of Oncor Electric Delivery Company LLC (Oncor) for a proposed CREZ priority transmission line is designated the Central B - Central A - Tonkawa 345-kV Transmission Line Project (Project). The proposed Project consists of constructing two new double-circuit 345-kV transmission lines. The first of these lines extends from Oncor's new Central B Switching Station, located north/northwest of Snyder, to Oncor's new Central A Switching Station, southeast of Snyder. The second of these lines extends from Oncor's new Central A Switching Station to Oncor's existing Tonkawa Switching Station, located southeast of Snyder. Combined, the two new 345-kV double-circuit lines are approximately 43 miles in length. Given that both circuits of each line will be installed initially, certification of both circuits is being sought in this application. The estimated cost of the Project is \$149,212,000.

In 2008 the commission determined that the transmission facilities identified in its final order were necessary to deliver to customers renewable energy generated in the CREZ. *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket Number 33672, Order on Rehearing (October 7, 2008). The Central B - Central A - Tonkawa 345-kV transmission line projects, the subject of this application, were specifically identified in that order as necessary facilities. In Docket Number 36801, Oncor was ordered to complete the Project in a single application. *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones*, Docket Number 36801, (July 8, 2009). The estimated date to energize facilities for the Central B - Central A - Tonkawa line is September 2011. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-0400 and PUC Docket Number 37409.

TRD-200904220
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 22, 2009

◆ ◆ ◆
Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 14, 2009, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Ne-

cessity for Service Area Boundaries within Cameron County. Docket Number 37460.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the city of Brownsville. BPUB received a letter request from Claudia M. Valle, requesting BPUB to provide electric utility service to a 0.877-acre tract of land. This tract is located on Naranjo Road, east of US 77. The estimated cost to BPUB to provide service to this proposed area is \$14,149.90. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than October 9, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37460.

TRD-200904175

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 21, 2009



Notice of Application to Amend Tariff

Notice is given to the public of the August 24, 2009 filing with the Public Utility Commission of Texas (commission) of an application to amend a tariff.

Docket Style and Number: Application of AEP Texas Central Company to Amend its Retail Delivery Service Tariff - Section 6.1.1.1.6.2, Municipal Lighting; Tariff Control Number 37388.

The Application: On August 24, 2009, AEP Texas Central Company (TCC) filed an application to amend its Tariff for Retail Delivery Service, Section 6.1.1.1.6.1 - Municipal Street Lighting Service and Section 6.1.1.1.6.2 - Ornamental Street Lighting Service-Company Owned - Cities of McAllen, Odem and Uvalde, in order to comply with the energy efficiency standards mandated by the Energy Independence and Security Act of 2007.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is October 9, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Tariff Control Number 37388.

TRD-200904195

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 21, 2009



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on September 17, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C.

Substantive Rule §26.214. The Applicant will file the LRIC study on September 21, 2009.

Docket Title and Number: Application of Windstream Communications Southwest for Approval of LRIC Study for Call Trace Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 37469.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 37469. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 37469.

TRD-200904184

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 21, 2009



Texas State Soil and Water Conservation Board

Request for Proposals

INTRODUCTION

This request for proposals (RFP) provides instructions and guidance for applicants seeking funding under the Clean Water Act (CWA) §319(h) Nonpoint Source (NPS) Grant Program in Texas. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the Texas State Soil and Water Conservation Board (TSSWCB) under the authorization of CWA §319(h). TSSWCB then administers/awards these federal funds as grants to cooperating entities for activities that address the goals and objectives stated in the Texas Nonpoint Source Management Program. This document can be accessed online at <http://www.tsswcb.state.tx.us/files/docs/nps-319/npsmgmtplans/2005mgmtprogram.pdf>.

The types of agricultural and silvicultural NPS pollution prevention and abatement activities that can be funded with §319(h) grants include the following: implementation of nine-element watershed protection plans (WPPs) and the NPS portion of Total Maximum Daily Load (TMDL) Implementation Plans (I-Plans), surface water quality monitoring, data analysis and modeling, demonstration of innovative best management practices (BMPs), technical assistance to landowners for conservation planning, public outreach/education, development of nine-element WPPs including the formation and facilitation of stakeholder groups, and monitoring activities to determine the effectiveness of specific pollution prevention methods. Strictly research activities are not eligible for §319(h) grant funding.

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration and education projects within the boundaries of impaired or threatened watersheds as well as projects in unimpaired watersheds. The 2008 Texas Water Quality Inventory and 303(d) List describes the current water quality conditions for waterbodies in the state. All proposals must focus on the restoration and protection of water quality. Up to \$2 million of the TSSWCB's FY2010 CWA §319(h) grant will be eligible for this RFP. Approximately \$1.2 million will be targeted to implementation and education and \$800,000 will be targeted to watershed planning and assessment. No more than 10% of this RFP may be utilized for groundwater projects. A competitive pro-

posal process will be used so that the most appropriate and effective projects are selected for funding.

Project proposals should, where applicable, stress interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and stress public participation.

This RFP does not set a maximum or minimum amount for individual projects; however, project funding generally ranges between \$100,000 and \$400,000 for a 3-year project. The TSSWCB CWA §319(h) NPS Grant Program has a 60/40% match requirement. The cooperating entity will be reimbursed up to 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The 40% match must be from non-federal sources and should be described in the budget justification. Reimbursable indirect costs are limited to no more than 15% of total federal direct costs.

Quarterly progress and final reports are the minimum project reporting requirements. Deliverables for general distribution (i.e., videos, news releases, literature) will be submitted to EPA for approval through the TSSWCB. All projects that include an environmental data collection component (water quality monitoring, modeling, bacterial source tracking, etc.) must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and EPA. Project budgets and timelines should account for the development and review of QAPPs accordingly. More information on QAPPs and the TSSWCB Environmental Data Quality Management Plan is available at <http://www.tsswcb.state.tx.us/quality>.

TSSWCB PRIORITIES

For this FY2010 RFP, the following priorities have been identified. Proposals that do not focus on these priorities are still welcomed. All things being equal between proposals, those proposals that do focus on these priorities have a greater probability of being selected.

Priority Project Activities

- Implement WPPs and TMDL I-Plans (See priority areas listed below)
- WPP Development Initiatives (See priority areas listed below)
- Support use of federal Farm Bill Programs through Cooperative Conservation
- Demonstration projects and or development of statewide education programs
- Ambient surface water quality monitoring to verify Category 5c impairments
- Conduct Recreational Use Attainability Analyses

Priority Areas for WPP and TMDL Implementation Projects

WPPs

- Arroyo Colorado
- Cedar Creek Reservoir
- Dickinson Bayou
- Hickory Creek
- Pecos River
- Plum Creek

TMDLs

- Adams and Cow Bayous (bacteria and dissolved oxygen)
- Aquilla Reservoir (atrazine)

- Gilleland Creek (bacteria)
- E.V. Spence Reservoir (salinity)
- Lake O' the Pines (dissolved oxygen through phosphorus)
- Lower San Antonio River (bacteria)
- North Bosque River (nutrients)

For detailed information on these completed WPPs and adopted TMDLs, including links to the published documents, see <http://www.tsswcb.state.tx.us/watersheds>.

Priority Areas for WPP Development Initiatives

- Watersheds Prioritized by the Southeast and South Central Texas Regional Watershed Coordination Steering Committee (<http://www.tsswcb.state.tx.us/cwp>)

Sulphur River Basin (Basin 3)

- White Oak Creek (Segment 0303B)

Sabine River Basin (Basin 5)

- Upstream and exclusive of Toledo Bend Reservoir (Segment 0504)

Trinity River Basin (Basin 8)

- Middle Trinity River (Segments 0804, 0803)
- Downstream of Richland Creek (Segment 0835)
- Upstream and exclusive of Lake Livingston (Segment 0803)
- Inclusive of White Rock Creek (Segment 0803B)

Colorado River Basin (Basin 14)

- Downstream and exclusive of O.H. Ivie Reservoir (Segment 1433)
- Upstream and exclusive of Lake Travis (Segment 1404)
- Exclusive of Pecan Bayou (Segments 1417, 1431, 1432, 1418, 1419, 1420)
- Exclusive of Brady Creek (Segment 1416A)
- Inclusive of Pedernales River (Segment 1414)

Nueces River Basin (Basin 21)

- Upper Nueces River (Segment 2112)
- Frio River and tributaries above confluence with Leona River (Segments 2117, 2109, 2113, 2110, 2111, 2115, 2114)

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local municipal and county governments and other political subdivisions of the State, educational institutions, non-profit organizations, and state and federal agencies. Private organizations, for profit, may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS

Submitted proposals will be reviewed, scored, and ranked based on the evaluation and ranking criteria included in this RFP. A minimum scoring requirement (70%) is necessary for proposals to be eligible for consideration.

Applicants whose proposals are recommended for funding will be notified and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's RFP and proposal submission packet, please visit <http://www.tsswcb.state.tx.us/managementprogram> or contact TJ Helton at (254) 773-2250 ext. 234. All proposals must be submitted electronically (MS® Word) using the template provided. Submit proposals to thelton@tsswcb.state.tx.us and mail 8 hardcopies to the address below. Proposals must be received electronically by 5:00 p.m. CST, November 16, 2009 to be considered. Hardcopies must be received within a timely fashion after electronic submission (by November 20, 2009).

Address Proposals to:

Texas State Soil and Water Conservation Board

Attn: TJ Helton

Mailing Address:

P.O. Box 658

Temple, TX 76503-0658

Physical Address:

4311 South 31st Street, Suite 125

Temple, TX 76502-3354

FY2010 GRANT TIMELINE

Issuance of RFP: October 2, 2009

Deadline for Submission of Proposals: November 16, 2009

Proposal Evaluation by TSSWCB: November 2009 - January 2010

Notification of Selected Proposals/Unsuccessful Applicants: February 2010

Work with Applicants to Finalize Selected Proposals: February - April 2010

Submit Grant Application to EPA: May 2010

Contract Award: July - August 2010

Project Start Date: September 1, 2010

TRD-200904204

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: September 21, 2009

South East Texas Regional Planning Commission

Retraction - Request for Qualifications

South East Texas Regional Planning Commission is retracting the following Request for Qualifications which appeared in the September 25, 2009, issue of the *Texas Register* (34 TexReg 6697).

Request for Qualifications

South East Texas Regional Planning Commission (SETRPC) is serving as the administrator for the Orange Regional Home Consortium (ORHC), where the City of Orange serves as the responsible entity for the Counties of Hardin, Liberty, Orange, and unincorporated areas of Jefferson County. The ORHC provides a variety of grant-funded programs all aimed at providing safe, decent, and affordable housing to low income families. Under HUD guidelines, ORHC funds are reserved for people at or below 80% of the average median family income for the respective area in which they live and are available through

two basic housing-need programs: Rental Housing and/or Community Housing Development (CHDO).

Consulting services will consist of the following tasks:

1. Consultant will provide ongoing technical services to the ORHC on an on-demand basis. Technical services shall include up to three site visits during the term of the contract.
2. Consultant will provide one day training to ORHC housing staff and such other persons as may be required. The training content shall be determined by the parties at least six weeks in advance of the proposed training to meet the needs of the Consortium.

Contact: David Dean, Contract Specialist, SETRPC, 2210 Eastex Freeway, Beaumont, Texas 77703, ddean@setrpc.org, (409) 899-8444, ext. 6303.

Closing Dates: If your company is interested and qualified to provide professional services to the ORHC, please send your proposal to David Dean via letter or e-mail. Proposals will, at a minimum, need to include your company's qualifications and resumé(s) and are due by 12:00 noon, CST on Friday, October 9, 2009.

TRD-200904241

Mike Foster

Housing Manager

South East Texas Regional Planning Commission

Filed: September 23, 2009

Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-200904227

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: September 22, 2009

Texas Water Development Board

Request for Applications for Flood Protection Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of applications leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program. Flood protection planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition,

applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of the flood protection planning grant program is for the State to assist local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. The flood protection planning study should also include an assessment of the environmental and cultural resources of the planning area as necessary to evaluate the flood control alternatives being considered. Solutions for localized drainage problems are not eligible for grant funding.

Description of Funding Consideration. Up to \$1,000,000 has been initially authorized for Fiscal Year 2009 assistance for flood protection planning from the Board's Research and Planning Fund. Up to fifty percent funding may be provided to individual applicants, with up to seventy-five percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Six double-sided copies on recycled paper and one digital copy (CD) of a complete flood protection planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., central standard time, January 22, 2010. Applications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231. Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Mr. Gilbert Ward at the preceding mailing address, or by email at gilbert.ward@twdb.state.tx.us or by calling (512) 463-7926. This information can also be found on the Internet at the following address: <http://www.twdb.state.tx.us>.

TRD-200904210
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: September 21, 2009



Request for Applications for Regional Water and Wastewater Facility Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) Chapter 355, Subchapter A, as amended, the submission of planning grant applications leading to the possible award of contracts for regional facility planning. This planning will evaluate and determine the most feasible alternatives to meet water supply and/or wastewater facility needs, estimate the costs associated with implementing feasible water supply and/or wastewater facility alternatives, and identify institutional arrangements to provide water supply and/or wastewater services for areas in Texas. In order

to receive a grant, the applicant must have the authority to plan, implement, and operate regional water supply and/or wastewater facilities.

Planning grant applications may be submitted by eligible political subdivisions from any area of the state. To be eligible for funding, at least two political subdivisions must participate in the proposed study and more than one service area must be evaluated for feasibility of regional facilities. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. Note: Studies related to the development of regional water supply plans, the evaluation of water supply alternatives, and drought response plans, as described in Texas Water Code, §16.053, are not eligible for funding under this Request for Applications. The purpose of this program is for the state to assist local governments to prepare plans that document water supply and/or wastewater service facility needs, identify feasible regional alternatives to meet water supply and/or wastewater facility needs, and present estimates of costs associated with providing regional water supply facilities and distribution lines and/or regional wastewater treatment plants and collection systems. The study should, at a minimum, include the following steps:

- (1) Develop Problem Statement;
- (2) Inventory Existing Conditions and Forecast Future Conditions and Needs;
- (3) Formulate Planning Alternatives;
- (4) Evaluate and Compare Each Planning Alternative; and
- (5) Select Best Planning Alternative.

A water conservation plan and a drought management plan must be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. The Board's population and water demand projections will be considered in preparing projections. Discrete phases to implement regional water supply and/or wastewater facilities to meet projected needs will be identified. Environmental, social, and cultural factors for possible solutions identified in the plan should be evaluated. Cost estimates will be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates will be made for each regional water supply and/or wastewater system component, including the water conservation program.

Description of Funding Consideration. An amount not to exceed \$1,000,000 has been initially authorized for Fiscal Year 2010 assistance for regional facility planning from the Board's Research and Planning Fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right not to award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Six double-sided copies on recycled paper and one digital copy (CD) of a complete regional facility planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., central standard time, Thursday, December 17, 2009. Applications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and

an application instruction sheet. Requests for information may be directed to David Meesey at the preceding mailing address, by e-mail at david.meesey@twdb.state.tx.us or by calling (512) 936-0852. More information can be found on the Internet at the following address: <http://www.twdb.state.tx.us>.

TRD-200904211

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Filed: September 21, 2009



Workforce Solutions Brazos Valley Board

Request for Proposal for Financial Monitoring Services

On September 21, 2009 Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for Financial Monitoring Services for its programs in the following counties: Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington. The Board is seeking a single contractor qualified and experienced in providing financial monitoring services. The complete scope of required services and the proposal requirements are contained in the Request for Proposal which may be viewed and downloaded at www.bvjobs.org.

Bidders may submit questions by email to richard@swtexas.net up until October 6, 2009. All questions and answers will be posted on www.bvjobs.org by October 8, 2009.

Due Date: An original and four (4) copies of a written proposal are due to the Board's offices no later than Tuesday, October 20, 2009 at 4:00 p.m. CST. Faxed or email proposals are not acceptable. Proposals

received after the indicated due date and time regardless of delivery method will not be accepted or considered for award.

Proposals may be hand delivered to:

ATTENTION: FINANCIAL MONITORING SERVICES PROPOSAL

Darrek Ferrell, Program Specialist

Workforce Solutions Brazos Valley Board

3991 East 29th St.

Bryan, Texas 77802

Proposals may be mailed to:

ATTENTION: FINANCIAL MONITORING SERVICES PROPOSAL

Darrek Ferrell, Program Specialist

Workforce Solutions Brazos Valley Board

P.O. Drawer 4128

Bryan, Texas 77805

Proposals received after the deadline will not be considered. WSBV accepts no responsibility for late proposals.

TRD-200904250

Tom Wilkinson

Executive Director

Workforce Solutions Brazos Valley Board

Filed: September 23, 2009



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).